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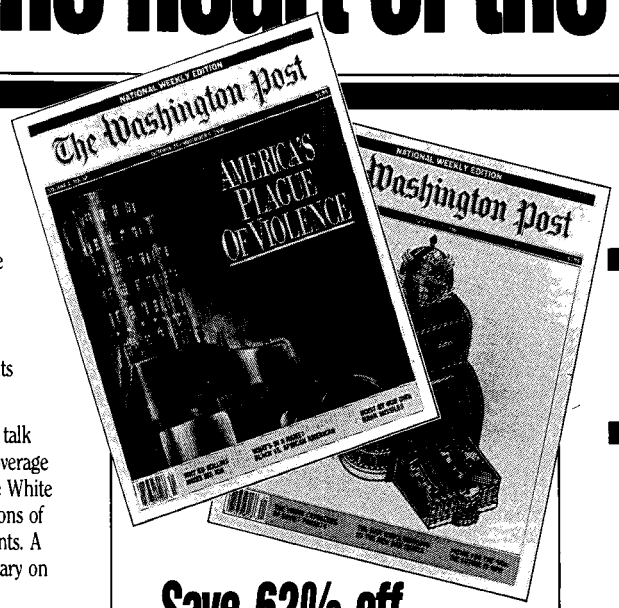

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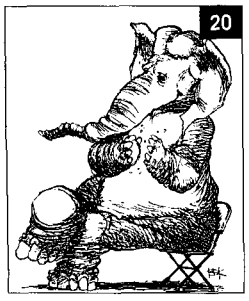

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Fatal Fallacies

By Virginia I. Postrel

The misleading ideas behind our Bosnia policies

FALL 1994 MARKED THE DEFEAT NOT only of the Democratic Party in Congress but of two central ideas —or clusters of ideas—that have animated it since the early 1970s. Those ideas lost not just a popularity contest in America but, far more tragically, a reality test in Bosnia.

The first cluster contains those ideas that treat people as mere components of ethnic, racial, or cultural groups. In domestic politics, this cluster produces ethnic quotas, racial gerrymandering, and escalating claims of victimhood; its basic tool is aggregation—lumping diverse individuals into groups, to be analyzed or stigmatized as such. It denies both the reality and the validity of intermarriage, cultural borrowing, assimilation, and, ultimately, individual character. Its adherents exist on both left and right, but only the Democratic Party promotes it explicitly.

In contemporary America, we call this cluster "multiculturalism," a misleading name that disguises balkanization as pluralism. Explicit multiculturalism is wildly unpopular, as numerous Democrats can testify. Yet our very language defines it as the fundamental characteristic of the Balkans. A Balkan country, a Balkan war, has little chance to be understood as anything other than a conflict among morally equivalent tribes.

And when Bosnia's advocates in the United States tried to whip up support for a major military intervention, they deployed the ultimate rhetorical weapon. They called Serb attacks on Bosnian Muslims "genocide." In December 1992, Elie Wiesel visited lame-duck Secretary of State Lawrence Eagleburger to ask that the United States do something to oppose the Serbs' "ethnic cleansing" campaigns. "Within minutes," reports *U.S. News*, "the two men were engaged in an intense discussion of the definition of genocide."

And rightly so. Crying genocide was a mistake. It not only triggered skepticism, it equated the Bosnian cause with the preservation of a race rather than resistance to aggression. Those who cried genocide forgot what is actually important, and terrifying, in all such atrocities: not the death of a race but the deaths of human beings—parents ripped from their children, peaceful lives invaded, torture and starvation. Atrocities happen person by person, even when they happen on a mass scale. And rare is the atrocity campaign that approaches genuine genocide—hunting a group to extinction. That doesn't make atrocities any less terrible.

With its emphasis on race, "genocide" is always a dangerous concept. But it was particularly misleading when invoked on behalf of Bosnia. If a broader cultural crime has been committed there, it is not the murder of a race but the murder of a cosmopolitan culture that stood against the division of people into groups. Ethnicity is fluid in Sarajevo, intermarriage common, religion comfortable. When Middle Eastern Muslims came to make common cause with their fellows in Bosnia, they found them insufficiently insular.

YET AMERICANS, A HYBRID PEOPLE, HAVE been told that the Bosnian conflict is an ancient—and, by implication, inevitable—struggle between clans. In his syndicated column, Pat Buchanan reveled in the conflict as a reassertion of tribal loyalties, the future of us all. A more conventional military analysis, based not on dueling racial groups but on rival governments vying for territory, would have served us better. Military conflict and political struggle, not ethnic ideology, are at the heart of Bosnia's woes.

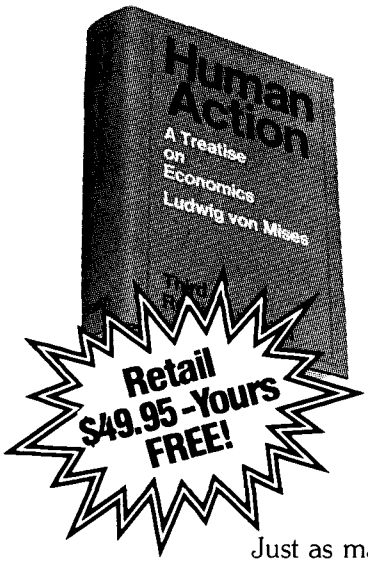
By emphasizing that Bosnia faced a *military* problem, such an analysis, perhaps, would have weakened the attraction of the second cluster of discredited ideas. This group includes such beliefs as "violence doesn't solve problems," "weapons cause violence," and, in the most extreme form, "violence is always wrong." Conversely, it contains the idea that "communication, not confrontation, is the way to peace." At any price.

In America, accepting these ideas defines a politician as an "Old Democrat," though not one Harry Truman or George Meany would recognize—this time line starts in 1972. Jimmy Carter, who still occasionally dresses up as secretary of state, subscribes to the entire cluster, presumably out of religious conviction. Bill Clinton, who isn't known for conviction, sometimes subscribes to some of it.

In domestic policy, these ideas show up primarily in calls for banning guns and, less frequently nowadays, for counseling rather than incarcerating violent criminals. In mid-1993, they were the subtext of the campaign against television violence. The attorney general, crusading congressmen, and activist groups wanted to Carterize television.

In the United States, such crusades are minor diversions, important primarily for the ideas they reveal. On the ground, as they say, in Bosnia, those ideas have consequences.

One consequence is that the United States has chosen sides in the Bosnian conflict. We have consistently, persistently, and despite all words to the contrary, backed the expansionist Serbs. Kowtowing to our European allies, who are utterly in thrall to anti-violence dogma, we have ruthlessly denied the people of Bosnia the arms they need to defend themselves. All in the name of



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peace, of "ending the violence" through ongoing negotiations.

The negotiations are futile. The arms embargo has made the cost of aggression negligible, the benefits of a truce to the Serbs nearly nonexistent. When one side has both territorial ambitions and an overwhelming military advantage, the result is inevitable: continuing war until the stronger side wins. What incentive is there to make peace?

That the United Nations has installed hostage forces, in hopes of preserving an unstable status quo, is no excuse for supporting the embargo. U.N. "peacekeepers" keep the peace only when both sides actually want it, as in the Sinai, and choose to bind themselves to it. Plopped down in the middle of an ongoing war, the peacekeepers' presence as handy hostages only aids the aggressor.

Enforcing an arms embargo against besieged people is a moral outrage. It is also the logical extension of the belief that violence springs from weapons, rather than from evil intentions, and that self-defense is as morally suspect as aggression. Those who say the United States has no vital interests in Bosnia are right; its cause is too distant, and the cost too high, to justify invasion. But make no mistake, the United States has intervened in Bosnia. And, increasingly, it looks as though we picked the winners.

No Deals

By Brian Doherty

After GATT, let's give unilateralism a chance.

BOTH THE CLINTON ADMINISTRATION and the world are possessed by trade agreement mania. Immediately before and after passing the GATT pact, Clinton attended international summit meetings and came out with the promise of future trade treaties analogous to last year's North American Free Trade Agreement.

First there was the meeting of the Asia-Pacific Economic Cooperation forum, where 18 countries agreed—vaguely—to end all trade barriers among them by 2020. Then came December's Summit of the Americas, which ended with Clinton and the leaders of 33 other Western Hemisphere countries vowing to create a Free Trade Agreement of the Americas, with negotiations scheduled to end in 2005. Chile looks to be enveloped by NAFTA before then. Meanwhile, the European Union is seeking to create a free-trade zone with the Mercosur nations of South America—Brazil, Uruguay, Paraguay, and Argentina.

For now, these are all merely agreements to agree. The details await various bureaucratic meetings that are scheduled to begin later this year but could stretch for years.

The experience with NAFTA and GATT, however, suggests that multilateralism is not the best way to achieve real free trade. Multilateral agreements tend to be larded with complications, half-measures, and escape clauses. They also create the potential for exporting onerous regulations in the name of "standardization." Those problems caused some free traders to decide that defeating those agreements would benefit the cause of free trade. But defeating them in their final stretch would have been counterproductive. The realities of GATT and NAFTA were complex and messy, but their passage indicated a growing friendliness toward freer trade on the part of both politicians and citizens in the United States.

Now more than 50 other nations also show a sudden willingness to sign on to regional free-trade regimes. Smaller free-trade agreements already abound among the countries of Latin America and Southeast Asia. The E.U.'s reach-out to the Mercosur nations shows that no one wants the Orwellian vision of three fortress-like

political and economic blocs to become a reality. The newly dominant congressional party in the United States professes a strong belief in free trade, along with distaste for the complications of international agreements. This seems to be the most political propitious time imaginable to push for the proper way to knock down trade barriers: unilaterally.

WITHOUT EXPENSIVE AND COMPLEX NEgotiations, Congress can do what's right. Abolish anti-dumping laws; why should the government penalize foreign companies for selling goods at a price that Commerce Department bureaucrats decide is too low? End all tariffs; why should citizens spend millions in hidden taxes on imported goods to protect inefficient local industries from competition? End all quotas on imports; why should U.S. producers and consumers be denied the ability to buy as much as they want of legal goods from whomever they want? Abolish the Jones Act; why should consumers pay extra to ensure that only U.S. ships carry foreign commerce?

There are many other laws that restrict or make more expensive buying and selling goods across the U.S. border, and Congress could get rid of them all singlehandedly. Doing so would be great for consumers, which means all of us. It would also be great for most producers—heavy manufacturing and the computer industry are two big examples—who depend on imports to get material they need for their production processes.

While trade agreements have the political benefit of appeasing the mercantilist mindset by forcing "concessions" out of other nations, they are not good enough. For one, they are never comprehensive—their major benefits are usually just tariff reductions—and they can lock into place bad policies. Much red tape survived NAFTA and continues to slow the movement of goods across the U.S.-Mexico border with non-tariff fees, certificates of origin, and health and labeling inspections. Spending years and millions negotiating treaties that guarantee such policies will continue is foolish.

Also, trade negotiations get bogged down in debates over who decides disputes under the agreements they produce. And they encourage attempts to "streamline" environmental or labor regulations—which, in most cases, means imposing them on poorer countries.

It isn't necessary to court further problems by embarking on the tortuous path toward more phonebook-sized trade treaties. Such deals may be better than nothing, but they aren't the best we can do. With the self-interest of many industries, a new congressional majority, and the ever-declining power of private-sector unions all converging, it has never been more possible to harness a powerful political alliance for free trade, uniting ideology and interest. While free trade allows changes that can cost jobs in the short run, in the long run allowing capital and labor to move freely where its owners want it to go is the key to generating prosperity for everyone.

The United States wisely eliminated trade barriers between states in the union, and we've all prospered for it. It's time to do the quickest, purest, and most effective thing we can to extend these benefits to our trade with the rest of the world. No complex negotiations are needed: End all tariffs and other policies that block the flow of goods immediately, and regardless of what other countries do. For the future of free economies the world over, there is no more important battle. ®

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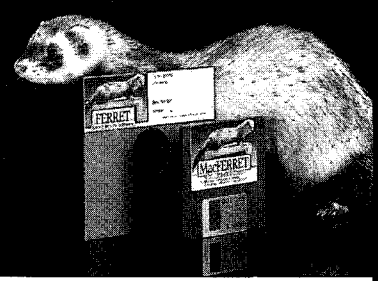

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Taxing Matters

We think the authors of "The Great Tax Revolt of 1994" (October) misattributed credit for New Jersey's tax revolt to Gov. Christine Whitman. Whitman, an obscure Rockefeller-style Republican, found her usual politics insufficient when running against Gov. Jim Florio in 1994. Trailing heavily in summer polls against the hated incumbent, she desperately moved late to embrace the anti-tax attitude of businessman Jim Wallwork, whom she'd beaten in the Republican primary. The voters responded with a November turnaround. But will Whitman's marriage of convenience with the tax-cut agenda last?

Robert Goodman
Kathy Greene
Morristown, NJ

I was greatly disappointed by the opening paragraphs of Mr. Moore and Mr. Stansel's article in the October issue. For the sake of a dramatic beginning, they demonstrated that they have little grasp of the facts in Colorado.

Mr. Bruce's "Taxpayer Bill of Rights" has had practically no effect, except to increase the cost of government. Voters have overwhelmingly voted to accept their elected representatives' judgment and to support their decisions. The tourism tax and a sales tax increase in Paonia (population 1,485), and perhaps a few others, are the only casualties of Mr. Bruce's attack on representative government. He has given employment to attorneys by filing multiple court challenges, which have almost universally been struck down.

Amendment 1 is only the first volley in an attempt to do away with the republican form of government. While the people of this state are not buying into direct democracy, Mr. Bruce quixotically now proposes an amendment to interfere with the right of contract and property rights.

His latest venture would have every decision of a local board subject to a direct vote on petition of a minimal number of electors within 90 days of a board decision. For example, an award of a paving contract or an annexation decision could not be implemented within 90 days to see if anyone took out a petition. If a vote were forced, a contract could be delayed for two years waiting for an election.

Stanley M. Morris
Cortez, CO

In "The Great Tax Revolt of 1994," our governor, Fife Symington, is lauded for pledging to abolish the state income tax. At the same time that Symington told us voters we had an $85-million surplus, he was not telling us about our $143 million in unpaid debt. He did some creative accounting to disguise the problem by sequestering millions of dollars already allocated to the county hospital and borrowing another $50 million from next year's budget. Not until a Libertarian filed suit in the Arizona Supreme Court did he pay off the debt with the "surplus" and other tax money.

After that, some Republicans down at the statehouse began calling themselves Republican/Libertarians. Afraid that his supporters would decamp to the side of John Buttrick, the Libertarian candidate for governor, who was calling for an end to the state tax, Symington announced that if re-elected, he would abolish the state tax.

Frances Arnesen
Phoenix, AZ

Messrs. Moore and Stansel reply: Unlike Robert Goodman and Kathy Greene, we are less concerned about Christine Whitman's original motivation for pledging to cut taxes than whether she's actually doing it. Whether Whitman is a political opportunist or a genuine supply-side convert is an open question, but there's no denying that her 15-percent rate cut last year was an admirable achievement regardless. We do share Mr. Goodman and Ms. Greene's suspicion that Whitman's tax-cut agenda may not last, though. She has shown scant interest in hacking away at the bloated New Jersey state budget to make room for more tax cut and has announced a postponement of the final phase of the promised 30-percent reduction.

We disagree with Stanley Morris's statement that the voter-approval requirement for new taxes in Colorado has "had practically no effect." Mr. Morris himself concedes that in just its first 18 months it already *has* led to the repeal of taxes that would have otherwise passed. We think the ultimate impact of Amendment 1 will be to discourage politicians from even proposing new taxes. Perhaps we didn't state one point forcefully enough in our article: We support voter-approval requirements precisely because they do remove unilateral taxing authority from elected representatives and give taxpayers a veto power over any new levies. Why shouldn't Colorado citizens have this veto authority? After all, it is their money. If this is what Mr. Morris refers to as "undermining representative government," then we're all for it.

Frances Arnesen is correct that the Libertarians were the original proponents of ending the Arizona income tax. The fact that Gov. Fife Symington has expropriated that idea and that many in the Arizona GOP feel that it is politically advantageous to call themselves "Republican/Libertarians" should not be cause for lamenting. It's an indication of the healthy impact the Libertarian Party is having on the policy process in Arizona.

Comparable Hurt

Kudos to Robert Higgs for exposing the fallacies in Herbert Burkholz's *The FDA Follies* ("An FDA Fable," October). Burkholz

is blind to the possibility that the FDA may be protecting us to death.

Unfortunately, Mr. Higgs commits a few fallacies of his own. He faults Burkholz for treating the Dalkon Shield IUD and the Bjork-Shiley heart valve as unmitigated disasters. Trouble is, they were.

Mr. Higgs says that the risk of the Dalkon Shield is small compared to the risk of pregnancy. But he ought to compare this risk with the risk of *other* IUDs. Had he done so, he would have found that the Dalkon Shield, which caused 260 septic abortions, 15 of them fatal, was indeed a disaster.

Similarly, Mr. Higgs considers the Bjork-Shiley heart valve an even greater lifesaver, and quotes the manufacturer's statement that the people bringing lawsuits "were going to die anyway, and they are alive today because of the valve." There were good heart valves, though, on the market, and Mr. Higgs should have compared the risk of the valve against *them.*

There are good arguments against the FDA. Defending indefensible products as lifesavers, however, is not one of them, and may give the anti-FDA cause a bad name.

Alexander Volokh
Los Angeles, CA

Mr. Higgs replies: Alexander Volokh's comments are well taken. A product whose use is better than nothing may still be worse than an alternative product.

In retrospect, relative product performances for a population can be determined. Apart from the individual differences that reduce the usefulness of aggregative findings, the question remains: Who is best situated to make *anticipatory* judgments about relative performance?

Remember that when the Dalkon Shield IUD and the Bjork-Shiley heart valve were being implanted, they were FDA-approved and physicians were selecting them in the belief that, all things considered, they would serve certain patients better than existing alternatives. With benefit of hindsight, we may fault

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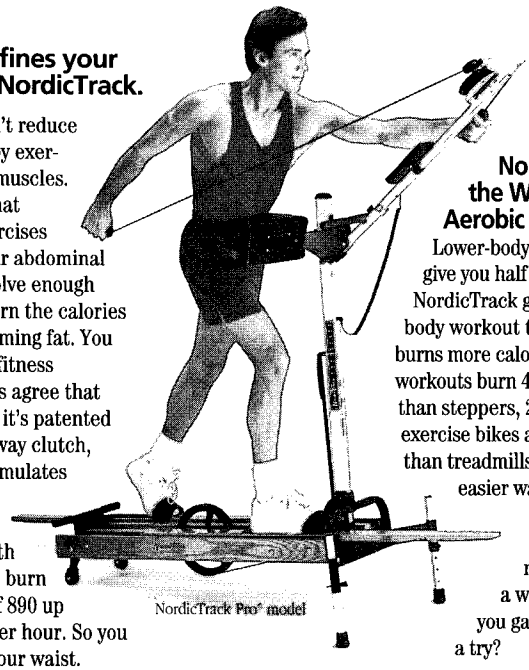
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the doctors as well as the FDA for giving bad advice. No system can banish all risks, but the FDA's approvals give consumers a false sense of security that blunts their incentive to acquire information.

Preservation Reservations

Rick Henderson's otherwise excellent article on the property-rights movement ("Preservation Acts," October) unfortunately somewhat overstates the scope of the Supreme Court's decision in the *Dolan* case. Although Mr. Henderson accurately describes the new test of "proportionality" set down by the Supremes, he leaves out the reason why the court found the city of Tigard's requirement that A-Boy Plumbing (a local hardware chain) build a bike path adjacent to an undeveloped flood plain to be a taking: The city demanded title to the flood plain area for a greenway.

The court said there was a legitimate relationship between the bike path requirement and Tigard's local traffic plans. In short, had Tigard not gotten greedy by demanding title to the flood plain, Florence Dolan's A-Boy Plumbing (a local hardware chain) would not have had much of a case.

While, like other property rights advocates, I am delighted by the end result of the *Dolan* case, there may well be as much cause for worry as for celebration. If the court considers such exotica as greenways and bike paths to be essential public purposes in terms of land-use regulation, what isn't? Until the courts—or state legislatures and Congress—clearly tell the nation's central land planners that they cannot pass unfunded mandates on to property owners, no one's private property is safe.

Tom Holt
Visiting Fellow
Capital Research Center
Beaverton, OR

Rick Henderson's outstanding article led off with the remarkable tale of Brandt Child, whose plans for his property were ruined by the U.S. Fish and Wildlife Service's demand that his land serve as the habitat for the "endangered" Kanab Ambersnail.

Mr. Henderson incorrectly placed Mr. Child's land "outside Moab, Utah," instead of outside Kanab, Utah, nearly 200 miles to the southwest. The western expression, "You can't get there from here," applies to the drive from Moab to Kanab.

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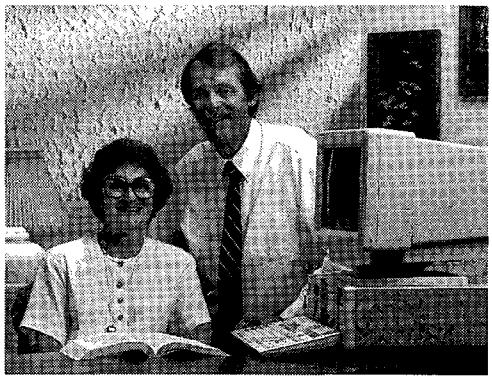

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Another aspect of "getting there from here" is the ability of Mr. Child to challenge the claim of covetous bureaucrats to his land in federal court. Mr. Child is "there" today only because Mountain States Legal Foundation (MSLF) represents him for free. Since MSLF—like other conservative, nonprofit, public-interest law firms—depends on public support to assist people like Brandt Child, it would be helpful for REASON to mention that fact.

William Perry Pendley
President and Chief Legal Officer
Mountain States Legal Foundation
Denver, CO

Mr. Henderson replies: I thank Tom Holt for clarifying the *Dolan* decision. And I appreciate Perry Pendley's pointing out the important role of Mountain States Legal Foundation in the Child case. Public-interest law firms like Mountain States, and the others I mentioned in the story, can help level the playing field for property owners facing regulators with coercive powers and seemingly unlimited resources.

Stamping Grounds

I read, with great interest, Brian Doherty's "Affirmative Reaction" editorial (October). As a postal worker, I could only laugh at an assertion made by Charly Amos, the Postal Service's manager of affirmative action.

Amos "points out that applicants for postal jobs go through objective written examinations. Except for military veterans, who get a slight boost, all comers are treated equally in the test grading." Either Amos is deliberately spreading misinformation, or he is just part of the long line of incompetents who permeate the Postal Service.

In May 1984, I took the clerk/carrier exam. That was objective, in the sense that it involved a rote memory of names and addresses. I scored a 95.8 on the test. But I am a white male of 100 percent German ancestry.

After nearly a year and a half, I was finally offered a $5.00-an-hour casual employee position at Milwaukee's main downtown post office. I was a casual for six months, when my name finally came up for a "part-time flexible" (PTF) letter-carrier position. From our casual group of about eight people, one *woman*, who was also *black*, and had a *disability* from her *military service*, used affirmative action points from all four criteria to catapult over the rest of us and into a regular machine-operator position.

That's only one example. After being a PTF carrier for 10 months, I transferred back to the downtown facility as a PTF distribution clerk, i.e., someone who sorts mail by hand. Remember my test score, because by the time I made "regular" (full-time permanent position) in a city secondary zone, one black woman was already there. She tested during the same time frame as I had, but had scored an 84.

While the gist of Mr. Doherty's piece was sound, it never ceases to amaze me how much misinformation surfaces when any part of the media tries to grapple with the United States Postal Service.

Brian A. Podoll
West Bend, WI

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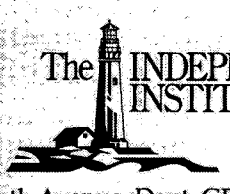

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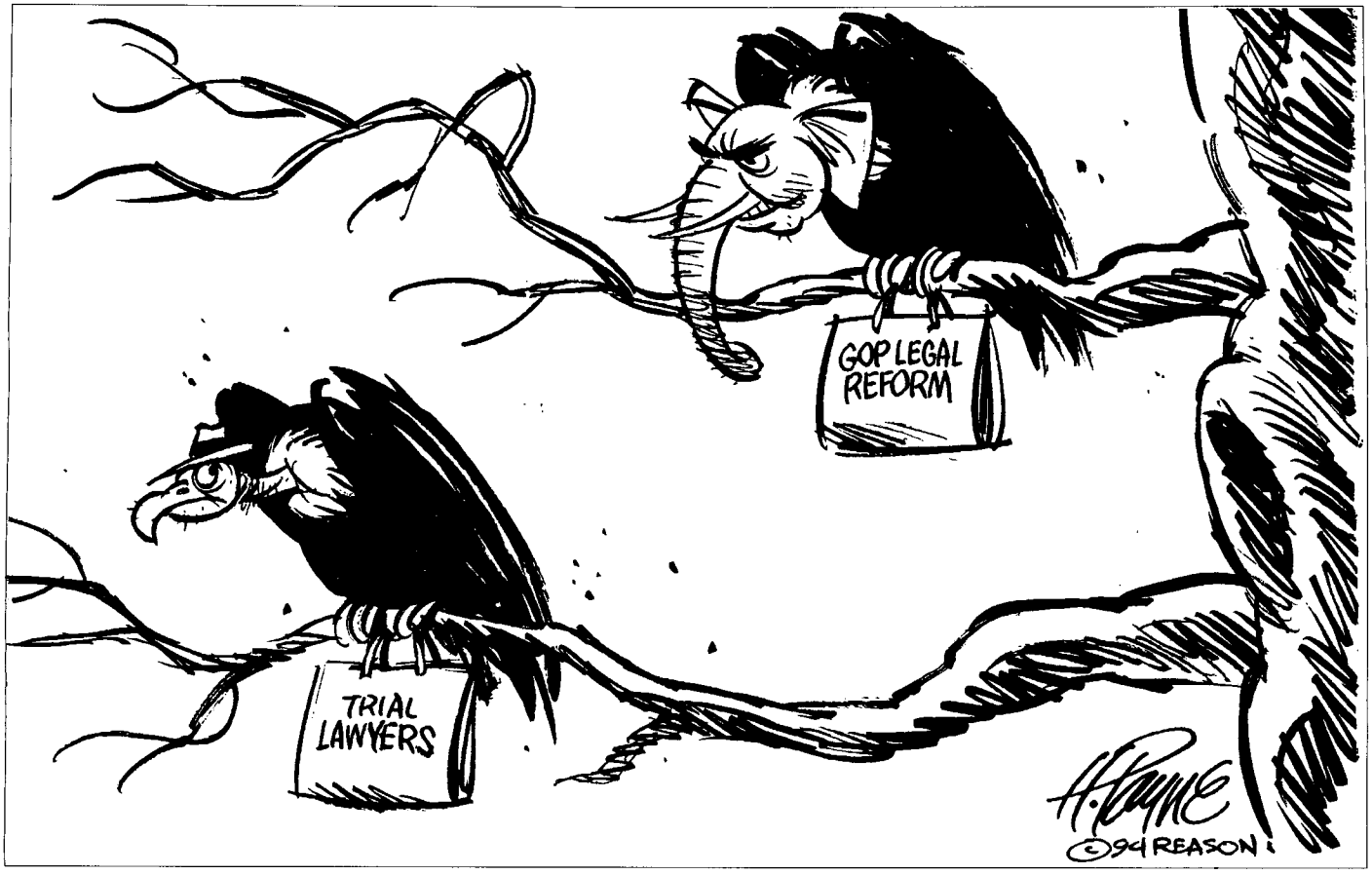

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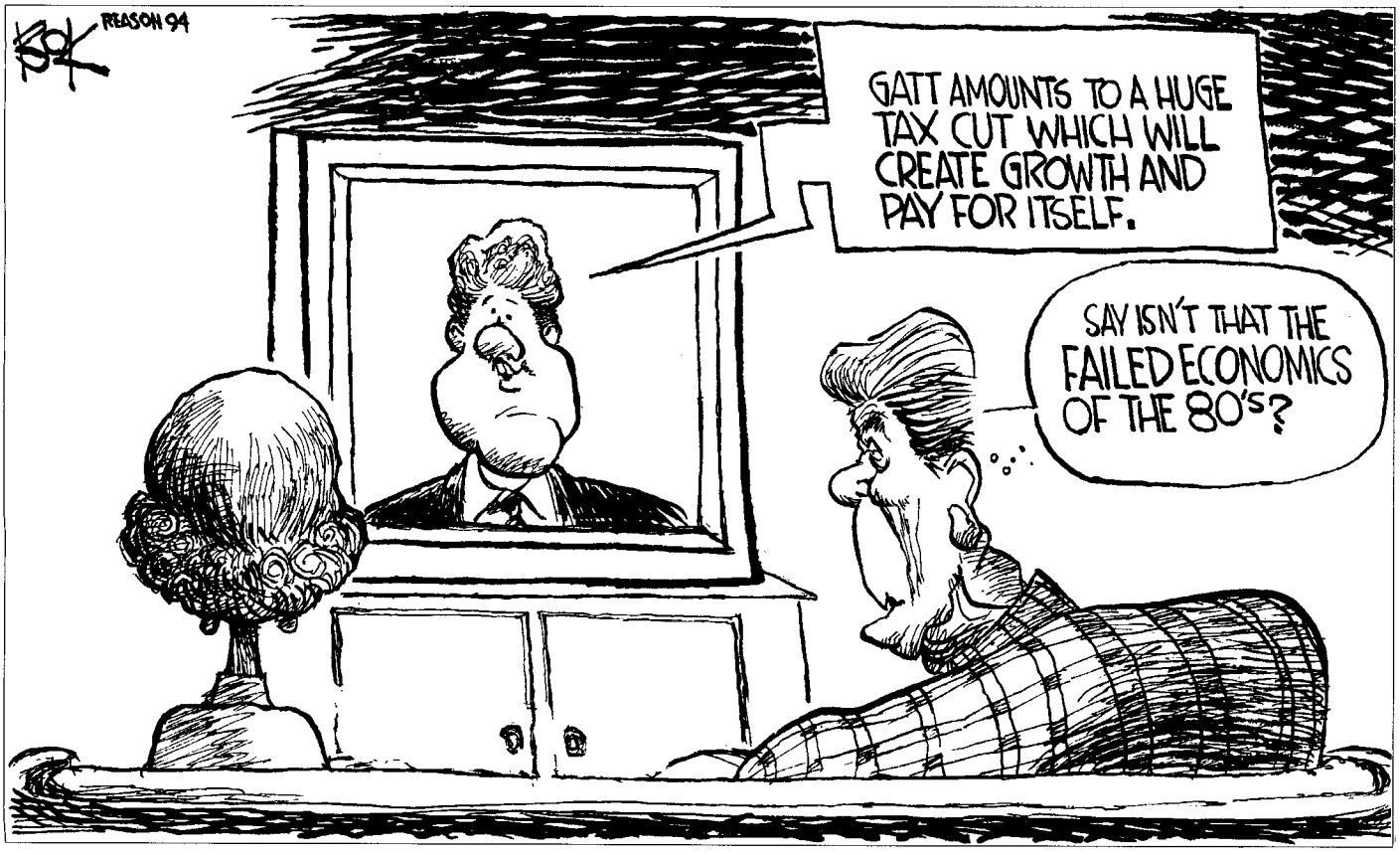
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SAY ISN'T THAT THE FAILED ECONOMICS OF THE 80'S?

CHIP BOK

SCOTT STANTIS

■ **Bill Clinton had better hope the Secret Service** does a better job protecting him than they do protecting the building housing the Office of Foreign Assets Control. Despite 24-hour patrols by the Secret Service, a burglar walked off with several items, including a television, from a second-floor office in the building.

■ **The *Los Angeles Times* asked several** studio executives how the November victories by Republicans would affect the movie industry. TriStar Pictures President Marc Platt replied, "Filmmakers will be dealing with stories about illegal immigration or the way society is dividing up into 'haves' and 'have nots'...." TriStar and its sister company Columbia rank near the bottom of box office share among the major studios.

■ **A teacher and a guidance counselor** have been suspended at Memphis, Tennessee's Winchester Elementary School. The two got into a fight at a school dance held as a reward for students with good behavior.

■ **In Norfolk, Virginia, Virginia Hudgins has** been charged with animal neglect. Authorities have decided that her pet pig is too fat. No word yet on whether they've charged any chihuahua owners for having undersized pets.

■ **French authorities have shut down an** art show at the Georges Pompidou Center. The artist had put spiders, snakes, and scorpions in cages with various animals that they normally prey upon and was going to let nature take its course. But the city's veterinary service decided that the display constituted cruelty to animals and closed the exhibit.

■ **City employees owe New York City** over $5.6 million in unpaid parking tickets. Over 7,000 workers have been identified who each owe at least $185. One parking meter attendant owes $14,608. Hey, what's the point of being a government bureaucrat if you can't flout the law?

■ **Missouri Attorney General Jay Nixon** has compiled a Top 10 list of the most frivolous lawsuits filed by state prisoners. Highlights include the prisoner who charged that the limit on Kool-Aid refills was cruel and unusual, and another who claimed that the cost of junk food in the prison commissary was too high. But at the top of Nixon's list was the prisoner who complained about the lack of salad bars on weekends.

■ **A Montreal man pulled a 65-year-old** woman from a wheelchair and sexually assaulted her. He was convicted, but now the Supreme Court of Canada has ordered that he be given a new trial. Why? The court ruled that the man's claim that he was too drunk to know what he was doing was a valid defense and he should be allowed the chance to prove his claim.

■ **When California voters approved Proposition** 187 in November, they voted to cut off state services to illegal aliens. It seems they may have cut off pizza as well. Three days after the initiative passed, three teenagers in Stockton—two Latinos and an Indian—claimed that a cashier asked them for naturalization papers when they tried to order a pizza. When they couldn't produce proof that they were citizens, they say, they were refused service. The pizzeria denies the story.

■ **Eight men have filed claims against** Jenny Craig Inc., charging that female coworkers sexually harassed them. One man says that co-workers complimented him on his impressive biceps, nice eyes, and "tight buns." He further complained that most of the workers were female and that female-style talk filled the workplace: "It was, 'Who to marry? Who is pregnant? How to get pregnant? I have my period.' —girl talk."

■ **Over 80,000 drug and alcohol addicts** get Supplemental Security Income, and according to a new federal study, about the only ways they'll ever get off the dole is to die or go to jail. Only 1 percent of these people ever get a job or recover, the study says.

■ **Keith Bradford of Waterford, Michigan,** has been charged with stealing a condom machine from a bar. Said police spokesman John Grimm, "All we can figure is, he was anticipating a big weekend."

—*Charles Oliver*

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Washington's drug policy has been one of the most expensive failures in American history.

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Who loses? Anybody who gets caught in the middle, including police officers and innocent children. Disputes aren't settled in courts of law, but with automatic weapons in the streets.

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When Surgeon General Joycelyn Elders said that the existing drug policy was "worth studying," she was censored. When Attorney General Janet Reno directed a review of mandatory minimum sentences for minor drug offenders, she was ignored. The silence is deafening. It should be alarming. America isn't becoming drug free...just less free.

WE THINK IT'S MORAL AND SOCIAL SUICIDE TO BE SILENT.

So, whose silence is it? It's yours, it's mine, it's the guy's next door. We can no longer sit quietly by while our nation continues to invest in a policy that clearly won't work. There's got to be a better way.

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If it were possible for America to spend its way out of this problem, we would have by now. But, we have always been able to reason together to find better solutions. Isn't it time we broke the long, dangerous silence and found one for this?

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Fact and Friction

Immigration by the numbers

By Rick Henderson

WRITING IN *NATIONAL REVIEW*'S November 21, 1994 issue, Editor John O'Sullivan says "immigration serves to enhance the welfare state and multicultural policies." But demographic data suggest that today's immigrants maintain "traditional family values" more consistently than the native-born.

In the Manhattan Institute's "Index of Leading Immigration Indicators," John Miller of the Center for Equal Opportunity and Stephen Moore of the Cato Institute compile data from *The Statistical Abstract of the United States*, the Immigration and Naturalization Service, the Census Bureau, and elsewhere to counteract prevailing myths about immigration. As recently as 1970, nearly half of all immigrants arrived from Canada or Europe; only 12.5 percent come from those nations today. Since 1981, nearly 78 percent of immigrants came from Asia, Mexico, and other Latin American nations.

But in 1990, 34.6 percent of foreign-born households contained the "traditional American family" of a married couple and minor-age children, compared with only 25.6 percent of native-born households. Seventy-six percent of immigrant households were composed of families, compared with 70.7 percent of native-born households. And Asian and Hispanic immigrant households were more likely to consist of families (81.1 percent and 85.2 percent, respectively) than the households of Asians (78 percent) and Hispanics (81.3 percent) born in the United States. Immigrants are also more likely to marry and not divorce, and are less likely to belong to female-headed households with minor-age children.

Working-age immigrants are also more likely to be employed than the native-born: 76.9 percent of foreign-born males older than 16 work, compared with 74.2 percent of natives. And working immigrants are less likely to depend upon taxpayers for their employment. While 15.7 percent of natives work for the government, only 9.8 percent of foreign-born legal residents and naturalized citizens do.

Given these statistical trends, it's not surprising that working-age immigrants receive welfare less frequently than natives. Only 2 percent of non-refugee immigrants who arrived between 1980 and 1990 receive welfare; nearly twice that ratio, 3.7 percent of the native born, are on the welfare rolls.

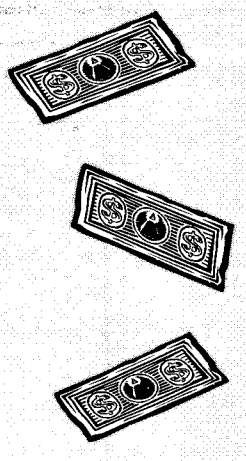
The index suggests that welfare and multiculturalism are problems caused and exacerbated by the native born. Rather than vilify immigrants, welfare-state opponents might improve their chances of success by enlisting the foreign born to their cause.

Pensions Penchant

Outgoing Congressmen retire in style.

By Nick Gillespie

Uncle Sam, it turns out, is a generous boss. He doesn't care if you leave for greener pastures (i.e., retire) or if you get fired for cause (i.e., defeated at the polls). Either way, your severance is hardly severe. For senators and representatives first elected before 1984, retirement pay is figured by taking 2.5 percent of the highest three-year salary average and multiplying it by the number of years served. Due to a series of "reforms," folks elected after 1984 can choose from a variety of retirement options that preclude easy pension estimates. Don't expect those golden parachutes to turn to lead anytime soon, though. If elected officials take full advantage of those options, notes Pete Sepp of the National Taxpayers Union, their pensions will be even better than those enjoyed by the pre-1984 crowd. A person must serve five years before qualifying for retirement pay.



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Sen. Jim Sasser (D-Tenn.)	$53,289*
Sen. David Boren (D-Okla.)	$47,874

* defeated in fall elections

Source: National Taxpayers Union Foundation

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Market Approval

The World Bank pushes private pensions.

By Ed Carson

THE WORLD BANK, TRADITIONALLY a bastion of statism, suddenly is taking on social security systems. A recent World Bank report calls for greater reliance on private savings and less on government-run programs.

The report, "Averting the Old Age Crisis," says that the number of people over the age of 60 is projected to grow from 500 million in 1990 to 1.4 billion by 2030 and that most government retirement programs won't have enough money to cover them. (See "Retirement Wrangle," November 1994.) And, it argues, public plans that require current workers to pay for current retirees' benefits hurt the economy: "Such social security arrangements may have discouraged work, saving and productive capital formation."

The report recommends that most retirees instead be covered by privately managed but closely regulated mandatory savings programs. Chile, Argentina, and Singapore already use some variation of this system. In contrast to "pay-as-you-go" plans, these programs are expected to encourage economic growth and provide a much higher rate of return for retirees.

But the World Bank isn't cheerfully embracing a free-market solution; there simply was no viable alternative. Estelle James, the report's research team leader, says, "We support privately managed systems because the history of publicly managed systems has been disastrous."

The report is part of a larger ideological shift at the World Bank, notes Ian Vasquez, who studies multilateral aid institutions, including the World Bank, for the Cato Institute. He says that the collapse of communism, the rapid growth of free-market developing countries, and the absence of any correlation between World Bank assistance and economic growth is forcing the post-war institution to reevaluate its positions on market systems.

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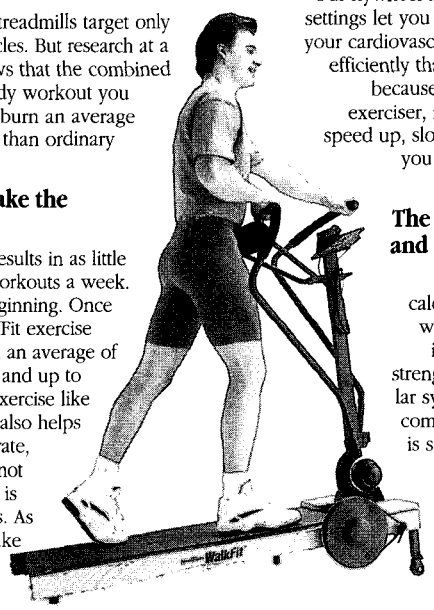

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Balance Sheet

By Rick Henderson

Assets

Stamp Act. One unintentional benefit of the postage-rate increase: It could make privatization more palatable. Rep. Dana Rohrabacher (R-Calif.), with the apparent blessing of Newt Gingrich, wants to convert the U.S. Postal Service into an employee-owned corporation. If Republicans also revoke the USPS monopoly, we can join Sweden, that other laissez-faire haven, and enjoy truly competitive mail service.

Factory Floored. For the next two years, you can kiss large-scale industrial policy goodbye. The GOP will likely defund the White House initiative to have the feds help manufacture flat-panel computer screens. Defense conversion will move to the back burners as well. And, says *Los Angeles Times* columnist Michael Schrage, "the administration's effort to transform the Commerce Department's National Institute for Standards and Technology into a billion-dollar venture capitalist will be fast-forwarded to annihilation."

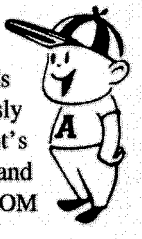
Capital Idea. Treasury Department officials and congressional Republicans propose lifting provisions of the Glass-Steagall banking act. Since the Depression, Glass-Steagall has kept banks from selling real estate and securities. Expanding business opportunities for bankers would also give mid-size companies access to new (and cheaper) capital for expansion.

Unnatural Disasters. Ralph Nader said GATT would eviscerate American environmental regulations. He's partly right, and it's a good thing. GATT prohibits environmental trade restrictions that aren't based on "scientific assessments of risk." Reports the *San Francisco Examiner*, Georgetown University law professor Robert Stumberg has found 90 California green laws that may violate GATT, including the anti-pesticide Proposition 65.

Liabilities

Revolting Development. Voters reject tax-limitation initiatives in Montana, Missouri, and Oregon. (See "The Great Tax Revolt of 1994," Oct.) And the Florida Supreme Court removes three anti-tax initiatives from the ballot. Americans for Tax Reform's Grover Norquist blames poor organization by grass-roots groups and lack of business support, impediments that can be overcome.

Junior's Achievement. Goofy Clintonites still rule the executive branch. Federal Communications Chairman Reed Hundt tells *Forbes ASAP* the feds "should take special steps to include groups that have not been previously included" in owning and staffing telecommunications firms. Hundt's "excluded" groups include "minorities, women, the elderly, the disabled and children." *Children?* Sorry. Our CEO dumped strained peas in the CD-ROM drive.



Rifle Swat. Gun-control mania seizes Canada. The ruling Liberal Party proposes mandatory registration for all firearms starting next year. And it wants to ban the import *and use* of most handguns and rifles. "Canadians feel strongly they do not want a country where they must own firearms to protect themselves," says Justice Minister Allan Rock. Hunting season should be a challenge.

Army Maneuvers. The much-ballyhooed peace dividend disappears. First come allegations of hollow military forces. Then the Congressional Budget Office estimates that by 2010 the Pentagon will need $250 billion more than is now budgeted just to maintain its projected scaled-down force levels. Finally, reports *U.S. News*, nonstop overseas "peacekeeping" missions have sapped service morale. The military must spend billions on bigger housing and child-care allowances to keep the troops happier and re-enlistments up.

Dog Days for Forfeiture

Everyone's cash is drug money.

By Brian Doherty

ONE OF THE GOVERNMENT'S TREASURED tools for seizing money from citizens appears to be going to the dogs.

In November, the Ninth Circuit Court of Appeals in California upheld a grant of summary judgment in the case of *U.S. v. U.S. Currency, $30,060*. The cash belonged to Albert Alexander, a Los Angeles–area man pulled over for running a stop sign. He had the money sitting in the front seat in a plastic bag in banded stacks of $1,000 each. The amount, the cops argued, is almost exactly equal to the street price of 2 kilos of cocaine. On the evidence of this and the positive reaction of a drug-sniffing dog to the money, he was arrested and his money impounded. Alexander claimed he was going to use the money to buy an interest in a friend's business.

The criminal charges against Alexander were dismissed, but the feds stepped in and tried to claim his money as drug-related, and thus subject to forfeiture. Jerold Bloom, Alexander's attorney, argued that the drug-sniffing dog's reaction to the money wasn't sufficient proof that the money had anything to do with drugs. Various forensic surveys of American currency have shown that the percentage contaminated with cocaine, especially in big cities, ranges from 75 percent to 97 percent.

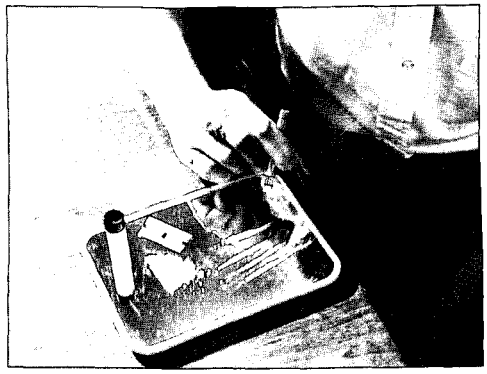
Says Barbara Grantland, national president of Forfeiture Endangers Americans' Rights (FEAR), "The sorting belts at the Federal Reserve have this residue on them. Janet Reno's money has drugs on it. You have money with drugs on it in your pocket right now."

Based on the questionable link between carrying drug-contaminated money and dealing drugs, the appeals court agreed to throw out the case. (The feds

have until December 22 to decide to call for a rehearing, or failing that to appeal to the U.S. Supreme Court.) This was the first appeals court decision to be decided on this basis, though a previous district court case in Tennessee, *Jones v. Drug Enforcement Administration*, came to a similar conclusion that was not appealed.

"I'm surprised they went as far as they did for just $30,060," Bloom says, then admits that the principle is probably more important to the feds than the money.

The principle is important because dogs are an important part of the Drug Enforcement Agency's repertoire, says Rick Barnett, a San Diego lawyer specializing in forfeiture cases. He says the precedent set will "absolutely" be important. "Tons of forfeiture cases, especially airline cases, depend on those dogs." Grantland of FEAR also emphasized the importance of drug-sniffing dogs in airports, where they are used on anyone who fits a preset profile, such as anyone carrying or using large amounts of cash.



Courts admit that almost all of our currency has some drug residue.

Lee Arian, the assistant U.S. attorney who argued the appeal for the government, thinks they could have won if he could have argued at the district level that the trace amounts that have been found to contaminate most currency might be too small for a dog to detect, and that a dog's alert is still meaningful.

Grantland, though, calls using dogs to identify money as coming from drug dealing "a hoax" because big-time drug dealers don't tend to store their cash in the same bag as their drugs. So, he says, any drug presence on money is a sign, at best, of "use, not distribution." Barnett says that the problem with the dogs is that they are too sensitive. "We don't know if they are reacting to a bale of marijuana in a locker or some residue from a jacket that someone was wearing when someone walked by them smoking."

The next important step, Barnett says, will be for a decision that says dog alerts are not sufficient probable cause to even conduct a search. ®

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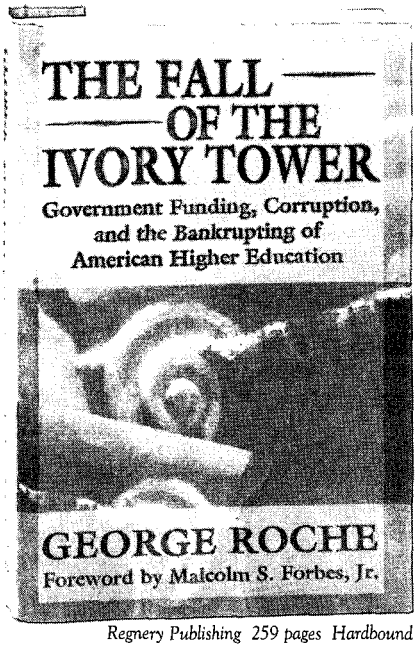
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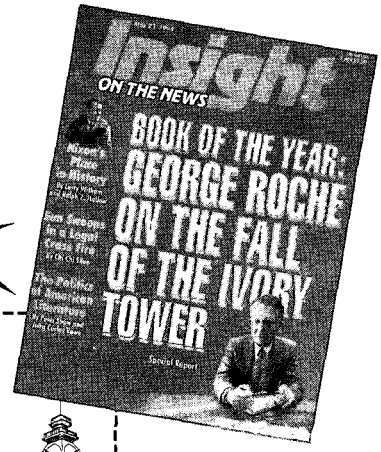

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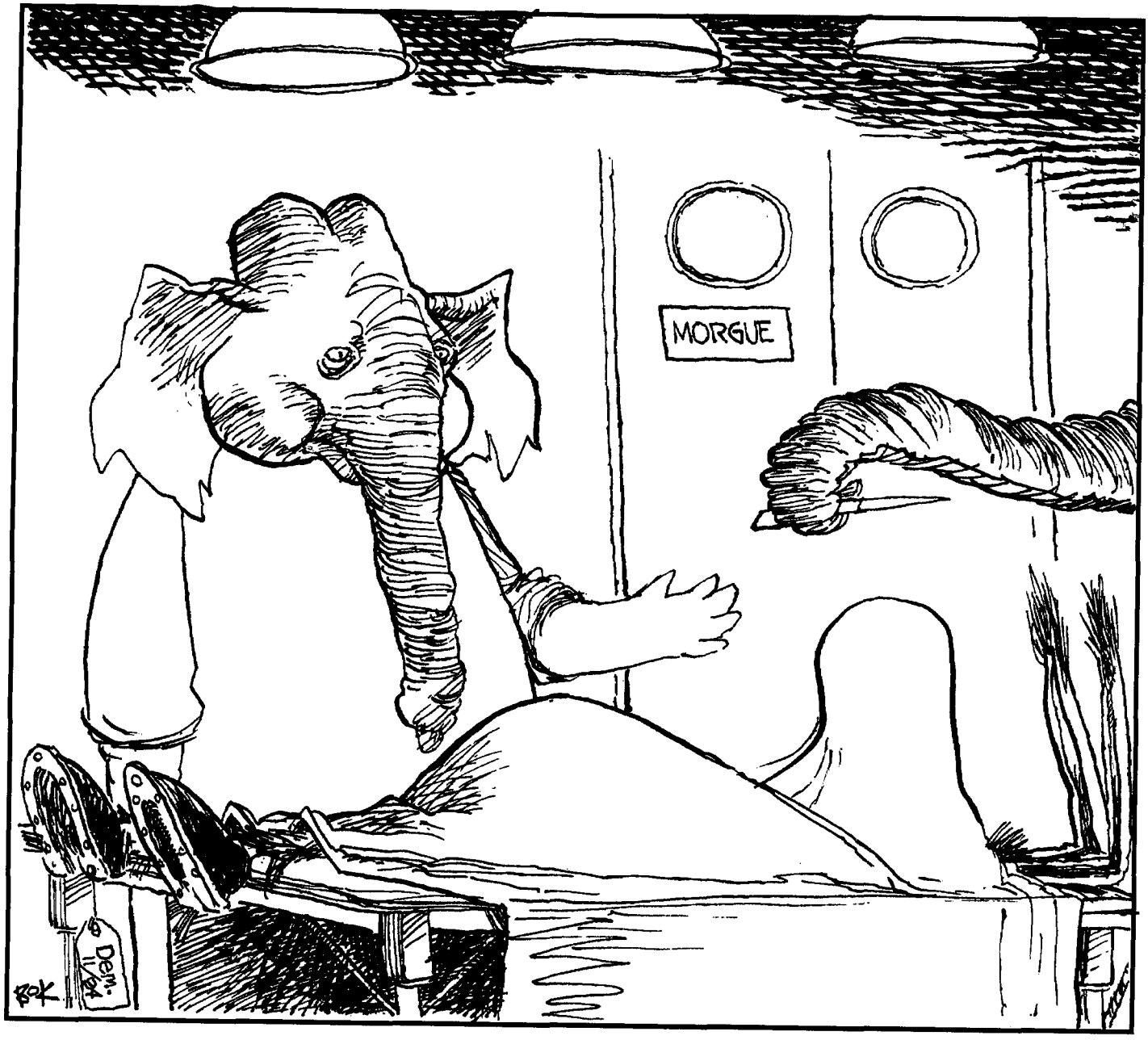


ANTWALK

AN ELECTORAL AUTOPSY

State House Sweep

The real Republican revolution

By John Hood

On Election Day, Pennsylvania's Republican Party—with successful Senate candidate Rick Santorum and gubernatorial candidate Tom Ridge at the top of the ticket—padded its lead in the state Senate and came one seat shy of seizing the state House. Then, a week later, Democratic Rep. Tom Stish made a fateful announcement: He was switching to the GOP, giving them a 102–101 edge in the House. Democratic leaders reacted fiercely. "His act was disillusioned and disoriented and disgraceful," Pennsylvania House Speaker H. William DeWeese fumed, obviously feeling dissed himself. "He has spit upon democracy and his constituents."

Legislative chambers across the country are hearing echoes of DeWeese's vitriol as longtime Democratic power brokers are forced to adjust painfully to the idea of riding the back bench for at least the next two or four years. They understand something the national media apparently don't. Republican gains in state and local offices could prove as significant as the party's gains in Congress. Indeed, the former are crucial to the latter in the long run.

Legislatures are, among other things, places for parties to train and groom future candidates for higher office. The Democratic Party's control over the majority of legislative chambers for most of the past 40 years (and, in the South, since Reconstruction) is an important reason for the Democratic Party's control of Congress during the same period. Democrats like government at all levels, and that enthusiasm has translated into better candidates, whatever you think of their agendas.

Republicans, in contrast, have typically been weak congressional candidates. Since they don't like government and prefer to make money in private pursuits, they've come into the political arena with liabilities. Some have simply been cranks, running in previously safe Democratic seats. Even those with experience in the state legislature have so often been in the minority, with little to do but show up and vote "no," that they might as well be political novices.

OK, this year that didn't stop many GOP candidates from winning. But if Republicans are to retain majority status on Capitol Hill, they'll have to get re-elected in years without quite so sharply drawn philosophical differences and without Bill Clinton's face to play with in campaign ads. Judging from previous crops of Republican candidates, this could be a challenge. They've often not dealt well with the media, they've been lesser known in their own states, and they haven't been as good on the stump. These shortcomings will fade only with political experience.

Republicans are going to gain plenty of that in state legislatures from now on. The numbers are shocking. In November, voters awarded Republicans a net gain of 459 seats in state legislatures. The Democrats now control a total of 48 legislative chambers, while the Republicans control 47 (three are tied). Before the election, Democrats enjoyed a 64-to-31 edge. Overall, Democrats hold 3,846 seats and Republicans hold 3,491.

The South was particularly hospitable to Republican candidates in 1994. Most ran anti-tax, anti–big government, pro–term limits campaigns in districts made more winnable for the GOP by race-based redistricting. One-fifth of the Republican legislative gains were made in the South; that figure is actually low, because one or both legislative chambers in Mississippi, Louisiana, Virginia, and South Carolina weren't up for re-election in 1994. If they had been, the Democratic bloodbath would have been far worse.

Republicans also made significant legislative gains in Midwestern states, taking control of lower chambers in Illinois,

ILLUSTRATIONS: CHIP BOK

Indiana, Ohio, Michigan, and Wisconsin, and upper chambers in the Dakotas. In the West, Republicans gained seven seats to reach parity with Democrats in the California Assembly, claimed both chambers in Alaska, and the Senates in Montana and Oregon.

The GOP made its single biggest legislative gain in North Carolina, where Republicans haven't held significant legislative power since General Sherman's troops were camped outside the state capital. A total of 38 seats were wrested from the Democrats—13 in the Senate, leaving a one-vote Democratic majority (as of December, amid rumblings of possible party switching) and 25 in the House, leaving a new 67–53 Republican majority. The seismic shift of political power in Raleigh had immediate aftershocks; the morning after the election, some Republican legislators have told me, their answering machines were already filled with messages from well-wishing lobbyists who had previously never given Republicans the time of day.

Another huge Republican victory was Washington, where they gained 25 seats to control the House for the first time in 12 years. In the state Senate, Republicans lost control in 1992 but picked up two seats in 1994 and are now a seat away from parity. Richard Davis, president of the Washington State Research Council (WSRC) in Olympia, says that the elections were in effect "a referendum on the two years of government" under a liberal Democratic governor and Democratic legislature. As on the national level, not a single Republican incumbent in Washington lost.

Both the North Carolina and Washington legislative campaigns focused primarily on taxes. In North Carolina, the legislature had managed to spend more than $1 billion in so-called surplus revenue in 1994 without so much as a dollar of tax relief. In Washington, $600 million in general fund tax hikes in 1993—plus millions more in taxes to fund a Clinton-style health care reform—energized small-business people and average taxpayers into active, intense opposition. In both states, Republican legislative candidates ran on contracts, similar to the celebrated Contract With America for congressional candidates, that included promises of tax cuts, welfare reform, regulatory reform, and market-oriented health-care reform.

Two successful U.S. House candidates in Washington cut their teeth as state legislators pushing tax relief, demonstrating the farm-team aspect of legislative service. In the previous two years, Linda Smith authored a tax-limitation measure in the state Senate while Randy Tate introduced a tax cut in the state House. Both gained statewide attention for those tax measures, WSRC President Davis says, giving them an edge in their challenges to Democratic congressional incumbents.

Since most Republican candidates in 1994 ran on a market-friendly platform, their victory is clearly good news for taxpayers, workers, and consumers. But it's also good news for Republican governors with reformist inclinations, such as Tommy Thompson in Wisconsin and John Engler in Michigan.

North Carolina's new State Rep. Larry Linney, a black Republican elected in part on a school-choice platform, is already being talked about for the 11th Congressional District in 1996, now represented by likely gubernatorial candidate Charles Taylor. In the future, more polished Republican candidates—seasoned from a term or two in a legislative majority—will run for Congress across the country, and many will win.

The other reason Republican gains in state legislatures matter is that the new Republican-dominated Congress seems likely to shift significant responsibilities (accompanied by grants or tax cuts) from Washington to state capitals. Increasingly, states are going to be calling the shots on issues ranging from welfare reform and health care to property rights and tort reform. State legislatures might also be voting on a balanced-budget constitutional amendment.

Since most Republican candidates in 1994 ran on a market-friendly platform, this is clearly good news for taxpayers, workers, and consumers. But it's also good news for Republican governors with reformist inclinations, such as Tommy Thompson in Wisconsin and John Engler in Michigan. Each will now have Republican majorities in both legislative chambers, after GOP takeovers in the Wisconsin Assembly and the Michigan House. The opportunity for serious innovation and experimentation in those states—already free-market idea factories—has never been greater.

So what made the Republicans winners in legislative elections in 1994? Obviously, the Clinton factor and the Foley/Rostenkowski factor worked in their favor, but that doesn't tell the whole story. After all, Democrats have had problems at the top of the ticket before—notably in 1978, 1980, and 1988—without taking as big a bath in state and local races.

Looking closely at election results and public-opinion polls, you can't help but conclude that a true realignment based on issues may be in the offing. "Republican gains this year aren't just a blip on the screen," says William C. Binning, chairman of the political science department at Youngstown State University in Ohio. In his own state, Binning predicts that even if Clinton carries Ohio in the 1996 presidential race, Democrats will claw back only one congressional seat and few legislative seats. Up and down the ballot, he says, the GOP "will remain a majority or competitive party."

Ideologically, Republican legislative gains represent a victory for numerous organizations, think tanks, and activists organized in the past few years to combat government expansion. The term-limits movement, the "wise-use" and property-rights movements,

taxpayer associations, gun-rights organizations, and the rejuvenated small-business lobby all helped provide Republican candidates with issues, foot soldiers, and momentum. The state free-market think tank movement, with which I am involved, also provided crucial intellectual ammunition to victorious candidates, as did the handful of national organizations—such as the Cato Institute, the Heritage Foundation, the Reason Foundation, and the American Legislative Exchange Council (ALEC)—that have done serious work on state policy in recent years. A sign of the times: Rep. Harold Brubaker, the new speaker of the house in North Carolina, is also chairman of ALEC this year.

Of course it's possible that voters, ever fickle, will decide they didn't really want limited government after all and vote in new, smooth-talking demagogues promising new government programs in 1996. But it seems more likely that Bill Kristol, the GOP's new quotemeister, was right on election night when he told ABC's Ted Koppel, "It's a new era in American politics." Kristol wasn't talking about Congress. He was talking about state and local races. That's where lasting political eras, rather than short-lived political fashions, are born.

Contributing Editor John Hood is on leave from the John Locke Foundation, a state think tank in North Carolina, and is currently a Bradley Fellow at the Heritage Foundation.

Race to Defeat

How the Black Caucus elected Newt Gingrich speaker

By John J. Miller

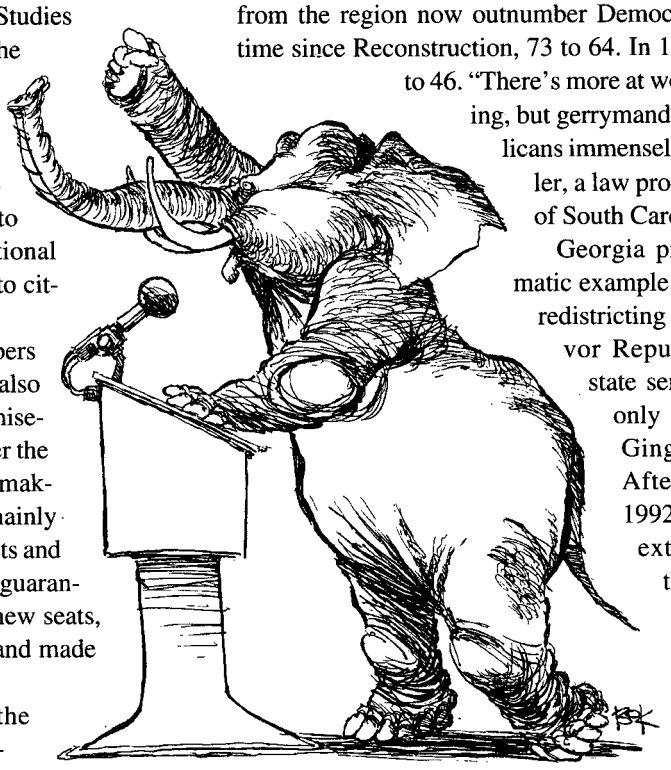
Black Democrats in the House suffered a disastrous defeat in November's election, even though they didn't lose a single seat. Despite going 37 for 37 at the polls, they enter the new Congress as members of the minority party—something none of them has ever done before.

They have only themselves to blame. Racial gerrymandering—long promoted by civil rights activists as necessary to ensure the election of blacks to Congress—doomed at least seven white Democrats to defeat in November, mainly in Florida, Georgia, and North Carolina. "I've warned the Black Caucus for years that this was coming," says David Bositis, a senior researcher at the Joint Center for Political and Economic Studies in Washington. "Over the last two elections, the Democrats have lost as many as 15 seats because of majority black redistricting."

If those 15 seats were still in Democratic hands, House Democrats would have a 218–216 edge. Black Democrats would continue to operate in the majority party and sway national policy on such issues as welfare reform, aid to cities, and Haiti.

But no more. What enabled record numbers of blacks to win election to the House in 1992 also planted the seeds for their political disenfranchisement in 1994. Congressional redistricting after the 1990 Census saw federal courts and state lawmakers create 13 new majority black districts, mainly by snatching black voters from existing districts and stuffing them into new ones. This essentially guaranteed the election of black Democrats to the new seats, but it also "whitened" neighboring districts and made them more Republican.

Most of the redistricting occurred in the South, home to nearly half of all black Americans. In 1990, the 13 southern states elected three blacks to Congress. Redistricting after the census lifted the number of blacks elected to Congress from the South to 17. But it also hurt many white Democrats who had previously enjoyed the reliable support of African Americans, up to 90 percent of whom vote Democratic in any given election. Approximately five candidates who probably would have won in the absence of racial gerrymandering were defeated in 1992. Others weathered the storm, sheltered in part by Bill Clinton's coattails. With Clinton a drag on the Democrats in 1994, however, the GOP found itself with easy pickings throughout the South. Republican congressional seats from the region now outnumber Democratic ones for the first time since Reconstruction, 73 to 64. In 1990, Democrats led 83 to 46. "There's more at work here than redistricting, but gerrymandering has aided Republicans immensely," says Katharine Butler, a law professor at the University of South Carolina.



Georgia provides the most dramatic example of how race-conscious redistricting tipped the scale to favor Republicans. In 1990, the state sent nine Democrats and only one Republican (Newt Gingrich) to Washington. After reapportionment in 1992, Georgia picked up an extra seat and created three majority black districts. The statewide vote split 7–4 for the Democrats, including three blacks (two new members and Rep.

John Lewis, first elected in 1986). Last November, positions reversed and the GOP gained a 7–4 advantage. All but one of the six GOP gains made since 1990 have coincided with a substantial loss of black voters in the districts electing Republicans. "There's no doubt that race-driven redistricting was a windfall to the GOP in Georgia," says Timothy O'Rourke, head of Clemson University's political science department.

This wasn't just a pleasant surprise for Republicans—it was the result of careful planning. The GOP worked in cahoots with civil rights leaders to create majority black districts. "We saw the anti-quota party pushing quotas in this particular area," says Carol Swain, associate professor of politics and public affairs at Princeton University. The Republican appointees in the Bush administration's Justice Department regularly harassed state reapportionment committees and forced them to set aside special districts for blacks. In Virginia, the House of Delegates mapped out a redistricting plan that earned nods from its black caucus and the state's black governor. But Justice halted the plan and ordered Virginia to create one more majority black district. It's not clear whether this accounts for the GOP's pick-up of one seat in Virginia last year, but both Republicans and blacks have made gains at the expense of white Democrats.

Racial gerrymandering—promoted by civil rights activists as necessary to ensure the election of blacks to Congress—doomed at least seven white Democrats to defeat. What enabled numbers of blacks to win election to the House in 1992 also planted the seeds for their political disenfranchisement in 1994.

These redistricting schemes ultimately stem from the Voting Rights Act, first passed in 1965 to ensure black voters full participation in electoral politics—something they had been denied, especially in the South. But over the past 30 years it has slowly transformed into something quite different: A mechanism that not only guarantees equal access to the ballot box for blacks, but also virtually requires racially proportionate election outcomes. Democrats have aided and abetted this development, essentially underwriting the GOP's cynical exploitation of their politically foolish act. They will now pay for it with years in the wilderness. Other byproducts of the Voting Rights Act include:

• *A more liberal Democratic Party.* Blacks now control almost 19 percent of the seats held by Democrats in the House, up from about 15 percent in the 103rd Congress. Many of them are on the far-left fringes of the party, while most are just plain liberal. They will add to President Clinton's woes, yanking him away from the New Democrat impulses that probably represent his only chance for a second term. They may also highlight friction within the party by publicly urging Jesse Jackson to challenge Clinton in the 1996 primaries or to run as an independent. They will make a lot of noise in the upcoming welfare debate and will surely play the race card early and often. But their influence, now that they are members of the minority party, is only a fraction of what it once was.

• *Voting-rights gridlock.* Black members of Congress won't want to jeopardize their seats by rethinking voting rights, no matter what the costs to their party. "They don't care about their constituent needs, they just want to get reelected," says Abigail Thernstrom, who first predicted disaster for southern white Democrats in her 1987 book, *Whose Votes Count? Affirmative Action and Minority Voting Rights.* Republicans aren't likely to broach the issue either, even as they bang away at affirmative action law in workplaces, schools, and courts. "This might be their single olive branch to the Black Caucus," says O'Rourke.

Perhaps only the courts can save the day for displaced Democrats. Lawsuits in Florida, Georgia, Louisiana, North Carolina, and Texas hope to knock down several of the majority black districts; partial success could go a long way in restoring lost seats in the South.

• *Black concerns ignored.* White Democrats have long been important allies to the civil rights movement. But constituencies drive politics, and members of Congress who see their black voter base shrinking will have less of an incentive to build bridges. Some may even switch parties in order to solidify their white support. "They'll see that they can't win as Democrats, so they'll jump ship," says the University of South Carolina's Butler.

• *Depressed black turnout in 1996.* Black turnout was low throughout the South in 1994, and redistricting may be partially to blame. For blacks in gerrymandered districts, elections are usually determined in Democratic primaries. There's less of an incentive to vote in November when the outcome is certain by June. For blacks with a smaller political base in other districts, mobilization becomes a problem. If they don't think their voices will resonate, they may choose to stay at home. The Democrats could face another tough election in 1996.

• *The GOP magnet.* Blacks have made an almost total political investment in the Democratic Party. Many may now consider it a good time to diversify. They increasingly support Republican candidates on the state and local level. The GOP nominated 24 blacks for Congress last year—a record number. What's more, Republican governors in New Jersey and Virginia each won 25 percent of the black vote in their 1993 races; George Voinovich of Ohio took a startling 40 percent last year. National numbers, however, remain low: George Bush won 11 percent of the black vote in 1988, and 12 percent in 1992. Over 98 percent of Republican presidential votes still come from whites, compared to about 75 percent for Democrats. But if current trends continue, and es-

pecially if Colin Powell lands on a GOP ticket in 1996, this spotty success on the local level may spill over nationally. If it does, the Republicans will have driven a devastating wedge into the Democrats' base.

• *A return to race-blind redistricting.* As the Democrats pore over the 1994 election returns to figure out what went wrong, they may notice their huge political and moral miscalculation in advancing voting-rights radicalism. The Republicans, in turn, could take their cue from Clarence Thomas, who, in the Supreme Court's longest opinion of the 1993–94 term, blasted racial gerrymandering as nothing more than political pork for racial and ethnic interests. The parties then could join together in bipartisan consensus to outlaw color-conscious redistricting. What are the chances? Slim to none. But that shouldn't stop us from hoping they do the right thing.

John J. Miller is vice president of the Center for Equal Opportunity in Washington, D.C.

The Center Folds

High noon for the New Democrats

By Joel Kotkin

Barely two years after their greatest triumph—the election of Bill Clinton as president—the "New Democrats" find themselves outflanked by conservatives and liberals alike. On the right, Newt Gingrich's radicals have stolen much of their idea-driven reformist thunder; on the left, the increasingly dominant redistributionist wing of the Democratic Party has effectively isolated the New Democrats and their major organ of influence, the Democratic Leadership Council.

For the past decade, the New Democrats worked to construct a new paradigm in American politics. Focusing on the values of family, community, and responsibility, they built a home for Democrats tired of the anti-capitalist victim politics of the party's constituencies in academia, labor, and the minority community. To voters, they promised to reinvent government, streamline bureaucracy, and promote a socially tolerant, economically robust America. To elected officials, they promised a centrist-sounding strategy that could win national elections.

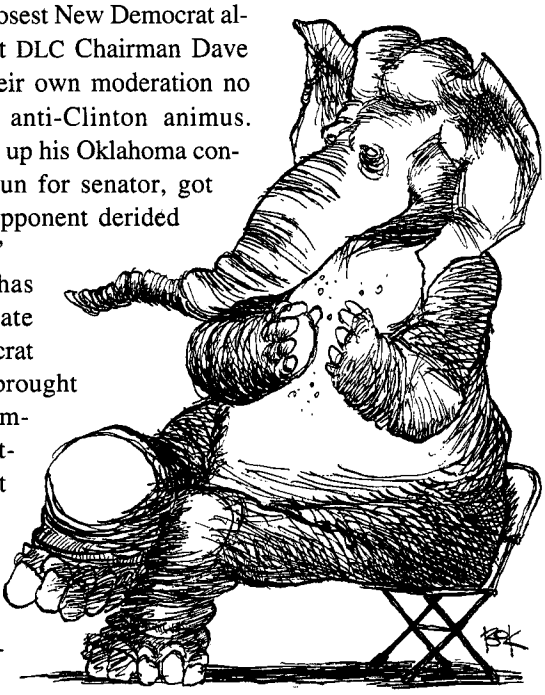
Today's sinking fortunes stem, first and foremost, from the fundamental betrayal of the New Democrat agenda by the very president whose ascendancy was thought to put the movement's ideas on the political fast track. By running as a New Democrat but governing as an old one, Bill Clinton, former chairman of the DLC, has left the movement defenseless against both intra-party boat-rockers and the swelling conservative tsunami.

The New Democrats' problems with Clinton began early in his presidency. Even as he directed the presidential transition, former DLC chairman Al From noted with horror: "I saw all around the people I thought we beat in the election." Although a handful of DLCers—notably Bill Galston and Elaine Kamarck—snagged relatively high positions in the administration, the balance of power remained firmly in the hands of Clinton's left-leaning intimates, especially Hillary Rodham Clinton, George Stephanopoulos, and Harold Ickes.

The result has been to place the DLC and the New Democrats in an untenable position. Tied by personal relationships and past associations to the president, they nevertheless have found themselves forced to oppose the administration both on tactics and long-term strategy.

The key split took place over health care. The decision to back the Hillary Clinton–Ira Magaziner perpetual-motion machine over all other alternatives and priorities (especially welfare reform) signaled the White House's traditionalist notions of how to build a national majority. Rather than reach out to taxpayers and families disgusted with the failures of the federal government, the administration, egged on by pollster Stanley Greenberg, instead tried to win the hearts and minds of the middle class by expanding the welfare state. This strategy meant hooking up with liberal Democrats in Congress rather than forging alliances with independents and moderates in the hinterlands beyond the Beltway.

That choice was a major mistake. By opting to play Washington insider rather than down-home outsider, Clinton essentially destroyed the credibility of the very people who joined him at the beginning of his 1992 campaign. This year, some of Clinton's closest New Democrat allies, such as current DLC Chairman Dave McCurdy, found their own moderation no hedge against the anti-Clinton animus. McCurdy, who gave up his Oklahoma congressional seat to run for senator, got skunked after his opponent derided him as "McClinton."



"Bill Clinton has managed to decimate the very New Democrat foot soldiers who brought him to power," complained one embittered New Democrat strategist on the morning after the fall elections. "A lot of the hard-core New Democrats—the people with

Clinton back in 1991—are now gone."

Clinton's betrayal leaves the New Democrats with little short-range hope of taking over—or even significantly influencing—the party. In the South, the historic base of the New Democrats, the 1994 elections were a barely mitigated bloodbath, with only a handful of moderate-to-conservative Democrats still in power after the ballot tallies. Except for its preeminence during the presidential primaries, the South has all but stopped serving as a serious center for Democratic politics.

Originally, the DLC grew out of the desire of elected officials such as Rep. Gillis Long (La.) to overcome the weaknesses of the national Democratic Party that resulted in huge Republican gains in 1980. The DLC, in its first incarnation, the Committee on Party Effectiveness, attempted to begin what Long called a struggle to get the party "to redefine itself" along less-pacifistic, less-interventionist lines.

Although this early move helped solidify party unity, it proved far less successful in "changing the party's message and agenda," notes University of Oklahoma political scientist Jon Hale, a leading student of the DLC. To some extent, the failure to significantly alter policy reflected the broadness of the group, which included moderates as well as unreconstructed liberals, such as then–New York Rep. Geraldine Ferraro.

The New Democrats' problems extend well beyond the White House to the very essence of Democratic constituencies and fundamental ideology. Until New Democrats are willing to take on the party itself, even to the point of breaking ranks, the Democratic Party will continue in its great leap leftward.

After successive defeats in the 1980 and 1984 presidential races, the largely southern moderates in Congress felt the need for a more formal structure to take on the left-oriented factions within the Democratic Party. Led by such figures as then–Virginia Gov. Chuck Robb, Georgia's Sam Nunn, and Florida's Lawton Chiles, the newly formed DLC pledged to put the party back in "the mainstream of American political life," as Nunn put it. Soon enough, Democrats in border and western states also began to rally to the DLC banner.

Yet even as the group gained partywide acceptance, it was riven with contradictions. Indeed, those problems were there from the very beginning: The naming of arch-protectionist Richard Gephardt as the DLC's first chairman sums up the group's longstanding ideological confusion. It soon became clear that the DLC represented, in microcosmic form, the unwieldy coalition of the larger Democratic Party.

At the core of the leadership stood the southerners, including a young governor named Bill Clinton, who favored moving the party to a more middle-of-the-road position. Joining the southerners were a host of pragmatic operators—investment bankers, defense industry executives, and other corporate bagmen—who saw in a moderately pro-defense, pro-business Democratic Party a way to hedge their bets against an eventual GOP loss of the White House. At the same time, many traditional liberals saw the New Democrats as a way to disguise their politics in more moderate garb. As one prominent San Diego financier and DLC fund-raiser put it: "I'm really for Walter Mondale, but we can't elect people like him. So we need the DLC."

For such pragmatic hardcore liberals, as well as the southern Democrats and corporate bagmen, Clinton proved the ultimate political vehicle. By nominating the former DLC chairman, the party had placed on the ballot an identifiable "New Democrat" who might carry some of the South, California, and other swing states. Yet at the same time, the left cognoscenti among the media and political class all knew the truth: Behind his DLC guise, Clinton was at heart an old-fashioned, big-government liberal who would try his best to fulfill their deepest social-democratic urges.

In the end, however, the electorate wasn't fooled by what proved to be essentially an exercise in deception. In political terms, the chickens came home to roost in a big way: The southerners in the DLC suffered the most punishing defeats. The 1994 landslide against Clintonism means, among other things, that the South has now shifted, probably for the next generation, into the Republican camp. The old DLC dream of building a truly national party with a strong southern base is now as much a lost cause as the Confederate States of America.

In the rest of country, where the battle for the future of the Democratic Party lies, some DLCers, such as Connecticut's Joe Lieberman, withstood the onslaught (as did centrists such as New York's Pat Moynihan, California's Dianne Feinstein, and Nebraska's Bob Kerrey). But the bulk of the survivors by far were those from the party's ultra-left wing, particularly House members from safe, often heavily minority districts. Because they are relatively insulated from the country's overwhelming rejection of the state, they feel no compulsion to move from their hard and fast neosocialist world view.

The survival of the left suggests that the New Democrats' problems extend well beyond the White House to the very essence of Democratic constituencies and fundamental ideology. Until New Democrats are willing to take on the party itself, even to the point of breaking ranks, the Democratic Party will continue in its great leap leftward.

That's because the party itself, both in Washington and most key states, remains unreformed. As it has for at least a generation, the party draws most of its finances and institutional support from government-dependent corporate interests, union bosses, poverty warlords, feminists, and environmental zealots.

This pattern is particularly clear in the Clinton administration's appointment process. It's true that Supreme Court and other high-profile nominees have had a vaguely New Democrat flavor. But the regional bureaucracies at places such as the Department of Labor, Housing and Urban Develoment, and the Environmental Protection Agency are perhaps at their most left-leaning since the New Deal. Unable to get new policies through an increasingly conservative legislature, these bureaucrats are likely to prove more determined than ever to impose a left-leaning agenda through administrative means.

For New Democrats, those appointments—the last tool for imposing Clinton's own personal political agenda—will make it difficult to show even the slightest "loyalty" to the White House. In California, for example, no political leader interested in economic growth could possibly do anything but fight draconian EPA edicts which threaten the future of everything from the state's ports to the continued prosperity of its huge agribusiness complex. Other administrative policies have sought to block popular measures aimed at curbing panhandlers who have chased away business and commerce from the heart of cities across the country. Even more disastrously, Democratic appointees are likely to continue pursuing their quota-oriented "racial justice" agenda, something that seems to guarantee the party permanent minority status, both in terms of its core constituency and its electoral status.

The left wing of the Democratic Party can only serve to destroy the party as a serious national force. The politics that work in safe districts in Manhattan, Madison, or Marin County cannot possibly work in the edge cities, small towns, and expanding suburbs where most of the electorate now resides.

The leftward cast of Clinton commissars has natural allies in remnants of the Democratic congressional presence. The Congressional Black Caucus—representing largely black and poor welfare-oriented constituencies—now stands as a veritable colossus in the House delegation, comprising roughly one-fifth of the Democratic delegation. At the same time, left-wing senators such as Barbara Boxer (Calif.), Paul Wellstone (Minn.), and Ted Kennedy (Mass.) now face a diminished number of moderate Democrats.

As a result, the internal debate in the party is likely to be dominated by those who explain the 1994 catastrophe as essentially a failure to motivate the party's "base" around expanded social welfare. Electorally, this is nonsense—as evidenced by the three-to-one defeat of a California ballot measure calling for a single-payer health plan—but that hardly means that the left won't continue stumping for its neosocialist policies.

Indeed, new disasters for the party, particularly in California, seem almost inevitable. Democrats generally opposed Proposition 187, which would cut off schooling and non-emergency medical services for illegal immigrants, but the measure passed overwhelmingly. The anti-quota California Civil Rights Initiative, scheduled for the March 1996 ballot, will lead the left even further out on the racialist fringe. The Democrats are likely to be in the unpopular position of defending minority quotas even though Prop. 187's passage shows California's predominately Anglo electorate is far from persuaded by those who wave the "bloody shirt" of racism.

Given a chance to let their fantasies run wild, the left wing of the Democratic Party can only serve to destroy the party as a serious national force. The politics that work in safe districts in Manhattan, Madison, or Marin County cannot possibly work in the edge cities, small towns, and expanding suburbs where most of the electorate now resides.

Ultimately, to survive as a movement, the New Democrats can only hope to combat such party elements by spelling out clearly their own sweeping ideological agenda. Although they can ally with the White House on such things as tough welfare reform and GATT, they must also unveil a muscular, centrist philosophy and platform capable of rallying moderate Republicans, independents, and disaffected Democrats into a powerful political force, perhaps even laying the foundation for a new political party.

This new ideology must go well beyond the kind of ameliorative approaches often associated with New Democrats. It is no longer enough simply to strive to make Washington's bureaucracies more effective. This tendency, notes political scientist Hale, has cast the DLC as little more than advocates for a "reconstruction of liberalism," or to paraphrase an old beer commercial, everything you want from a Democrat—and less.

The rise to power of clever ideologues such as Newt Gingrich necessitates an intellectually radical alternative perspective that goes well beyond soft-selling liberal dogma. More than simply "reinventing government," New Democrats must take up the potent issue of devolution of government services away from Washington toward state and local governments. The natural resistance of some big-government Republicans, who will want to prop up Washington now that they are finally in power, could provide a tremendous opening to outflank the GOP.

At the same time, New Democrats must also begin to fashion an economic program attuned to the needs of the emerging entrepreneurial economy, particularly in California and the Northeast, where the party is still competitive. Breaking with the old class base of union members and government-dependent industries such as construction and aerospace, the New Democrats must develop tax and regulatory strategies critical to entrepreneurial ventures in high-tech industries such as software and multimedia, specialized manufacturing in fields as diverse as medi-

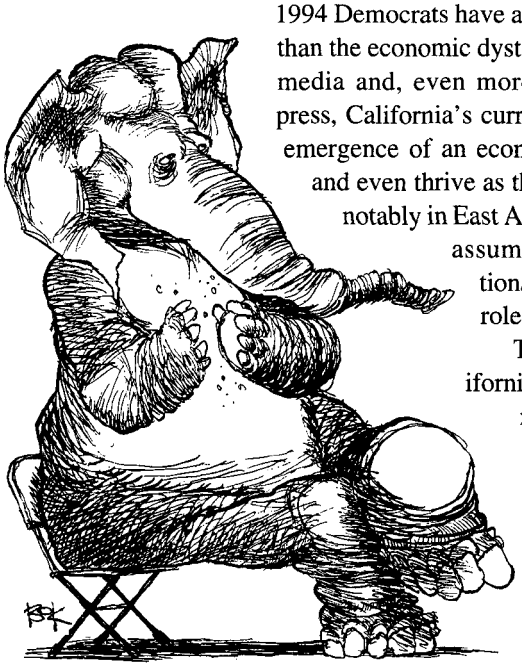
cal instruments, computers, textiles, and machine tools, and high-value-added services such as entertainment.

This strategy demands a dramatic shift from the tactics taken by the Democratic Party—and even some DLCers—under the disastrous stewardship of Clinton. While White House (and occasional DLC) pollster Stan Greenberg advises the party to target largely older, lower-middle-class Perotistas, its largest potential constituency actually lies among the mostly affluent baby boomers working in the new information-age economy, particularly in metropolitan urban regions. This new constituency is made up largely of people whose experiences have been shaped in the post-bureaucratic economic environment of the late 1980s and early 1990s. They are natural supporters of a program built around political decentralization, deregulation, free trade, and public secularism.

Without fashioning a program to attract this group, the Democrats could well find themselves in electoral limbo for years to come. One critical factor lies in the decline of the union movement. Once the bulwark of the party, unions are clearly on the wane, even though they maintain enormous clout within the Democratic Party apparatus itself. Nationwide, unionization, outside of public employment, has been dropping precipitously for over a decade, most notably among the young. Today fewer than 6 percent of workers aged 18 to 24 are in unions. Ten years ago, that percentage was nearly twice as high.

The collapse of traditional working-class politics reflects a wider trend toward smaller, more decentralized organizations in the private sector. Since the late 1980s, the number of business owners has eclipsed the number of union members. Close to two-thirds of the workforce is now employed in smaller enterprises that have historically been non-unionized, including representatives of the most advanced parts of the economy, such as the computer hardware and software industries.

The boom in smaller firms is particularly true in California, a state which may well determine whether the post-1994 Democrats have any future at all. Rather than the economic dystopia portrayed in local media and, even more so, by the national press, California's current reality reflects the emergence of an economy that can survive and even thrive as the developing nations, notably in East Asia and Latin America, assume more of the traditional mass-manufacturing role.



The workers in California's new economy represent one of the largest new constituencies in the state. In 1994, nearly 80 percent of all California voters had at least some college education. Those making over $60,000 represented nearly 40 percent of the actual voters in California, while 30–49 years olds represented 45 percent of all those casting ballots. And, even in a Republican year, they proved quite willing to return to the Senate a pro-business, centrist Democrat, Dianne Feinstein, who reached out beyond the traditional Democratic base.

For New Democrats, in California and elsewhere, the lessons of 1994 should be fairly obvious. By building a base around emerging economic constituencies, the New Democrats can forge a 21st-century alliance that fits into developing class dynamics. Although such a strategy is denounced as heresy by leftoid Democrats, such a shift in emphasis is not at all unprecedented.

During the 1920s, for example, the Democrats shifted away from their dependence on southern and midwestern agrarians and embraced the new, heavily immigrant working class that emerged with the rise of corporate capitalism. An embrace of smaller firms and entrepreneurs would essentially return the party to its historic roots and class base. Although this offends the neo-Marxist analysis popular on the Democratic Party's left, the number of self-employed people now exceeds that of union membership. The grassroots action now has clearly shifted to the small proprietor, just as it had to unionized workers in the previous industrial epoch.

In California and other states, the DLC has begun, if slowly, building a New Democrat base. Members of the organization, for example, include many professionals, entrepreneurs, and others distinct from the old class base of the Democratic Party. Many of them are active in fields—such as biomedical or communications industries—where big government is seen less as a lever for advantage than a suppressor of wealth generation and creativity. Many also come from highly entrepreneurial recent immigrant groups who recognize that their future lies in expanding their role in the private, not the public, sector.

This does not mean that New Democrats need to be, as Jesse Jackson and others assert, little more than Republicans in drag. Unlike a large portion of the GOP, particularly the part shaped by religious right and nativist constituencies, New Democrats still believe in the basic principles of effective government, tolerance, equal rights under the law, and maintaining a strict separation of church and state. And rather than relying purely on markets, most New Democrats also believe that capitalist impulses should be targeted to help ensure that residents of ghettos and barrios have a chance to participate in the system.

By linking opportunity with responsibility, entrepreneurship with concern for social commonweal, New Democrats have the potential to fashion a message and program that could transform future American politics. That, not coddling an administration hostile to or uncomprehending of the changes sweeping the country, should be the highest priority of the movement if it seeks something other than a historical footnote.

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CAPITOL IDEAS

AN AGENDA FOR THE SECOND HUNDRED DAYS

ILLUSTRATIONS: CHIP BOK

Labor Gains

Reforming employment law

By Michael McMenamin

Advice to the new Congress on labor law reform: Be bold. Empower individual employees. Don't be co-opted by the Chamber of Commerce. Eliminate entrenched privileges. Don't compromise with organized labor.

Above all, don't be intimidated by the alphabet soup created during the past 60 years of increasing government regulation of the employment relationship—NLRB, FLSA, OSHA, EEOC, OFCC, ADEA, ADA, FMLA, etc. You don't have to dismantle, brick by brick, six decades of federal employment legislation. And you shouldn't try. If you do, the Democrats will beat you over the head with anti-employee labels while they continue to take hard and soft campaign contributions from organized labor.

Rather, consider three simple reforms which, taken together, will be revolutionary in their impact on the American workplace.

1) Abolish the Davis-Bacon Act.

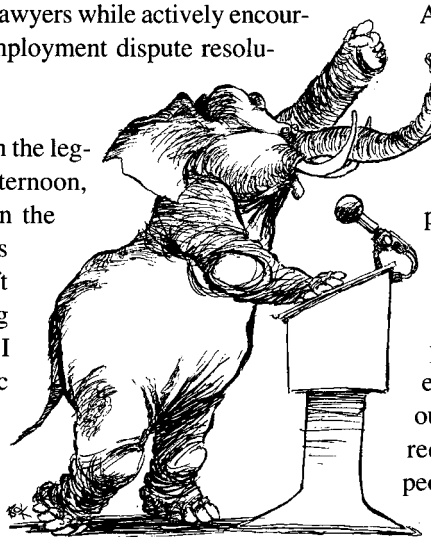
2) Eliminate the National Labor Relations Board's restrictions on employee-involvement committees in the workplace.

3) Require all employment disputes involving federal law to be handled by neutral third-party arbitration under the Federal Arbitration Act.

These three reforms will:

- Decrease government spending by many billions of dollars at federal, state, and local levels;
- increase meaningful employment opportunities at entry level and more skilled positions for inner-city and other disadvantaged youths;
- increase U.S. productivity by encouraging more individual employee initiative and involvement in the workplace;
- dramatically decrease litigation expense for employment-related disputes;
- reduce the total number of government employees, especially at the federal level;
- create more effective protection for individuals against wrongful termination without cause;
- decrease job opportunities for lawyers while actively encouraging the use of lay persons in employment dispute resolution.

All this can be accomplished in the legislative equivalent of an afternoon, i.e., before the fall of 1995, when the presidential campaign commences in earnest. I have consciously left out, for political reasons, abolishing or reducing the minimum wage. I know there are excellent economic reasons for eliminating it. I know that it disproportionately hurts the poor and black inner-city youths. But until the Congressional Black Caucus has the political courage to endorse the concept, no responsible Republican who wants to recapture the African-American vote that belonged to the party from the Civil War though the 1920s should touch it. Never mind that the minimum wage has been racist in its impact since the 1950s; it wasn't conceived in racism, merely ignorance and 1930s populism. All of which leads to:



Reform #1: Abolish the Davis-Bacon Act. Unlike the minimum wage, Davis-Bacon has racism at its ugly little heart. It was conceived in 1931 in response to an Alabama contractor winning the bid for a veterans' hospital in Long Island using black labor who had been shut out of New York's lily-white construction trade unions. Aided by southern Democrats denouncing "cheap colored labor," Herbert Hoover, his generation's George Bush, signed the law in March 1931, turning his back on the black voters who had supported his party since Reconstruction.

Davis-Bacon and its progeny require that any construction project that receives federal funds must be paid the local "prevailing wage," which generations of Department of Labor bureaucrats have interpreted to mean the prevailing union wage in a given area, even if the percentage of union workers is only 50 percent. Gene Methvin, Washington editor of *Reader's Digest*, reports in a recent article that the federal government could save more than $3 billion in construction costs in the next few years by repealing Davis-Bacon. In Philadelphia, for example, electricians are paid nearly $38 an hour on federal projects, while private contractors pay slightly less than $16 an hour. In Oakland, California, carpenters receive $28 an hour on federal projects versus $15 an hour on private projects.

Methvin quotes Thomas Henry Massaro, a third-generation union mason and former housing director in Newark and Philadelphia: "We could rehabilitate three or four times as many houses for the same money and put many more people to work if we just rid ourselves of Davis-Bacon."

Art Pearson, an African-American electrical and general contractor in Tacoma, Washington, says, "I could put two or three people to work for every Davis-Bacon wage employee." Paul King, head of UBM Inc., the largest minority-owned construction business in Illinois, also urges outright repeal of the law: "The black private sector could be the catalyst for real change."

Finally, Methvin quotes John Cruse, an African-American contractor in Boston, who no longer bids on low-income federal housing work because local union practices allow him to employ only one apprentice for every five journeymen: "That prohibits us from training our neediest inner city youth....[H]ow can we talk about reducing unemployment, crime, and drugs and moving people off welfare and not give those living in the inner city the opportunity to work in their own community?"

Remember these voices. Don't settle for half a loaf. Ignore the bill by Senator Larry Craig (R-Idaho) to raise the exemption on Davis-Bacon projects from its current minimum of $2,000 to $500,000. Listen to Art Pearson, Paul King, John Cruse, and other successful African-American businessmen, and repeal Davis-Bacon outright.

Reform #2: Eliminate the National Labor Relations Board's restrictions on employee-involvement committees in the workplace. The second reform is also aimed at entrenched union privileges, and like the first reform, will empower individual employees and, quite possibly, improve productivity. How? Eliminate Section 8(a)(2) of the National Labor Relations Act. Section 8(a)(2) makes it illegal for a company to "dominate or interfere" with any "labor organization" or contribute financial or other support to it. It was intended, back in the 1930s, to prohibit the formation of company unions. It has long since outlived any usefulness it once had.

The main problem with Section 8(a)(2) today is that the members of the NLRB appointed by George Bush and the guy who succeeded him, are using Section 8(a)(2) in both unforeseen and unintended ways. Specifically, those who favor an adversarial model for labor relations—and here I include trade unions, all current NLRB members, and most Democrats—are using Section 8(a)(2) as their weapon of choice to discourage and inhibit the formation of employee-involvement/employee-participation committees designed to improve productivity and enhance product quality.

The purpose of the employee-involvement movement is to give all employees at all levels of a company a greater voice in improving company operations. Companies do this to make themselves more competitive, but major beneficiaries also include the employees themselves who, because of this organizational restructuring, find greater fulfillment in their jobs and greater control over the content of their jobs.

In a series of recent decisions commencing in the early 1990s with *Electromation* and *duPont*, the NLRB has vetoed the use of such employee-involvement structures. It does this by broadly defining "labor organization" as being any employee structure created by companies to seek greater employee input into job functions and productivity. After all, the employee performing a particular job function is in the best position, if his opinions are listened to, to offer advice on how to improve performance. Any input like this invariably involves "working conditions," which makes any company-initiated employee structure that deals with this a "labor organization" unlawfully "dominated" under Section 8(a)(2).

Any workplace structure, employer created or not, that empowers individual employees ought not to be impeded. Treat company support for labor unions like campaign contributions: Require companies to file public disclosure forms regarding financial and other assistance to unions and deliver copies to all employees.

Apologists for the NLRB have claimed that *Electromation* and *duPont* are atypical and do not undercut the employee-involvement movement. In *Electromation,* employee-involvement committees were challenged in the context of a union organization campaign, while *duPont* involved health and safety committees created without the consent of an existing union. The fact is, however, that the NLRB and its union supporters are trying, in *Electromation* and its progeny, to perpetuate an adversarial relationship in the workplace. The politically correct response to their denials is, "They're lying through their teeth."

Anything that empowers individual employees is a setback for organized labor and, by definition, the employees of the NLRB, whose jobs depend upon the continued existence of organized labor. Yet the decline of organized labor continues unabated from its high point of 35 percent of the private workforce in 1951 to barely 10 percent today. If present trends continue, it will be closer to 5 percent by the year 2000, a 20th-century low.

As with Davis-Bacon, don't "clarify" or "modernize" this law by legislatively repealing *Electromation.* That is the intent of legislation introduced by Sen. Nancy Kassebaum (R-Kan.) and Rep. Steve Gunderson (R-Wis.). Their legislation is well meaning and certainly pro–employee involvement. But it is a product of minority thinking—compromise and accommodation. Think like a majority, and simply eliminate Section 8(a)(2) and all the case law construing it.

Any workplace structure, employer created or not, that empowers individual employees ought not to be impeded. If a company's support for genuine labor organizations is considered a real problem today, pass a new law. In fact, treat company support for labor unions like campaign contributions: Require companies to file public disclosure forms on a quarterly basis regarding financial and other assistance to unions and deliver copies to all employees. After all, just because lobbyists make campaign contributions to politicians doesn't mean they own them. Upon reflection, maybe that isn't the best analogy. Still, you get the picture: Eliminate 8(a)(2). You can waste time in 1996 holding hearings on whether company-dominated unions are still a problem requiring federal legislation today.

***Reform #3**: Require all employment disputes involving federal law to be handled by neutral third-party arbitration under the Federal Arbitration Act.*

The third reform is potentially the most far reaching. Delays in processing discrimination charges by the NLRB and the Equal

Employment Opportunity Commission are of near-legendary proportions. The Department of Labor isn't much better. Don't believe these agencies' cries for more employees to help with the backlog. Cut their staffs to caretaker level. Strip state and federal courts and administrative law judges of their jurisdiction to hear employment-related charges under any federal statute regulating employer-employee relations: the National Labor Relations Act and anti-union discrimination; Title VII of the Civil Rights Act, which prohibits race, sex, and natural origin discrimination; age discrimination under the Age Discrimination in Employment Act; handicap discrimination under the Americans with Disabilities Act; the Wage and Hour Law; the Family Medical Leave Act; virtually anything involving employment you can conceive of, with the exception of actions against pension and benefit plan fiduciaries under the Employee Retirement Income Security Act.

Instead, require all individual employment disputes under federal law to be subject to final and binding arbitration. Unless a company has already established a final and binding grievance or arbitration procedure for its own employees, arbitration will proceed according to rules established by the American Arbitration Association with arbitrators appointed by it, the Federal Mediation and Conciliation Service, or agreed to by the parties. Arbitrators would have authority to give injunctive relief as well as damages, including punitive damages. Decisions of arbitrators could be appealed only pursuant to the provisions of the Federal Arbitration Act, which largely limits appeals to fraud or misconduct by arbitrators and not to factual or legal mistakes. Or, if that seems too scary, give federal courts the authority to overturn obvious legal or factual errors made by arbitrators.

To encourage more companies to establish final and binding arbitration procedures for all employee disputes (including wrongful discharge, etc.) and not just those with respect to rights under federal law, *any* final and binding arbitration procedure recognized by federal courts under the Federal Arbitration Act would be permitted. This would encourage more companies to establish "peer review procedures" where final and binding decisions on employment disputes are rendered by panels of fellow employees who volunteer for the purpose. Employee peer review is a growing phenomenon among companies. Those who have it swear by it. Fellow employees are more sensitive to, and can be a better check on, arbitrary managers than third-party arbitrators with little or no appreciation of workplace realities. The same is true when dealing with fellow employees. They don't tolerate substandard job performance. Peer review panelists tend to apply to the conduct of fellow employees the same high standards they apply to themselves.

What about the legions of government employees, mostly lawyers, who enforce these federal laws—the General Counsel's Office of the National Labor Relations Board, the National Labor Relations Board's Administrative Law Judges, the EEOC, the Department of Labor, etc.? To paraphrase a recent campaign slogan: Give them severance pay and send them home to find honest work.

Encourage these arbitrations to proceed *without* lawyers. If both sides choose to proceed with a lawyer, make the loser pay the winner's attorney's fees *and* the entire fee of the arbitrator. If only one side has a lawyer and it loses, make it pay the entire fee of the arbitrator. If neither side has a lawyer, each pays its own costs and the arbitrator's fee is split 50–50.

Above all, keep first principles in mind when enacting these reforms. People are our most precious resource—empower them, not bureaucrats or unions. Reward companies which recognize this and treat their employees fairly.

Contributing Editor Michael McMenamin is an employment lawyer in Cleveland.

Communication Cleanup

A freedom of information act

By Peter Huber

The cost of processing and conveying information will consume a steadily growing fraction of every budget, private and public, for the rest of our lives, and quite possibly for the rest of American history. Manufacturing, transportation, energy, finance, education, medical care—the prosperity of almost every sector of the economy will hinge on telecommunications and information processing. Growing the information economy will be as critical to our national wealth as maintaining a stable currency. In fact, currency itself—which is no more than a primitive medium of communication—is fast giving way to newer, more private forms of data bases and electronic communication. Reed Hundt, chairman of the FCC, may be as important to our future as Alan Greenspan. All this means that getting telecom policy right is transcendently important.

But what's right? Telecom jurisdiction today is divided higgledy-piggledy among the Federal Communications Commission and countless state regulators. The Department of Justice and Judge Harold Greene, who still police the 1984 decree that broke up Bell, have a large and independent slice of the legal action. These various regulators and litigators oversee interstate telephony and all of broadcast under laws written in 1927 and 1934, and a consent decree drafted in 1982. Cable is regulated under a pair of rubbishy statutes enacted hastily, and almost thoughtlessly, in 1984 and 1992. Satellite is regulated mostly by analogy to telephone and television. The copyright law most relevant to broadband telecom was cobbled together in a truly

abominable piece of legislation passed in 1976.

The last Congress tried to fix the mess. It failed. In a classic exhibition of Washington at its overstaffed, overlobbied, constipated worst, proposals to deregulate gradually metamorphosed into proposals to regulate more than ever. Then they died merciful deaths. This was nothing new. Congress has been trying to pass a comprehensive new telecom law since 1981.

The Republicans are now promising action by Easter. They might consider this modest proposal (I don't really expect they will—this is a thought experiment): Write a new law that addresses only government, no one else. No new studies, rules, tariffs, or schedules. No new mandates, proscriptions, tribunals, boards, or commissions. A law, in short, that simply clears away an obsolete underbrush of law itself. It's what the industry most urgently needs.

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Entry. Monopoly is indeed a nasty thing. The biggest monopoly in town is always government. Franchise rules and entry regulation shore up existing monopolies. To fix monopoly, you have to go after and disable the worst monopolist, government itself. So...

Repeal the federal law that forbids phone companies from providing video services. Repeal the same law that (arguably) forbids cable companies from providing phone service. Preempt any state regulation to the contrary.

Authorize ATT, MCI, and any other interstate carrier or broadcaster to deploy in-state wireline or wireless networks. Preempt any contrary state regulation.

Repeal all existing rules that stop broadcasters from building or buying cable, or cable from entering broadcast, telephone from entering either, or any of the above from going into print or other media. Eliminate all rules that limit the aggregation of radio stations, broadcast stations, or cable properties. Eliminate all rules that restrict vertical combinations of media companies and content providers, like movie theaters and Hollywood studios. Leave in place only the antitrust laws—which can be applied firmly, case by case, based on up-to-date evaluations of what really would impede competition under current conditions in the rapidly converging telecom markets.

Preempt all state laws that forbid or cripple deployment of Satellite Master Antenna Television services (SMATV, or private cable) or Shared Tenant Services (private telephone exchanges). Eliminate all state and federal excise taxes, surcharges, or franchise fees imposed specifically on private or public carriers, broadcasters, or electronic publishers. These almost always represent attempts by government itself to cash in on monopoly rents.

Eliminate all restrictions on foreign ownership of U.S. telecom facilities. The one qualification might be to let U.S. trade negotiators keep the ones they specifically need as bargaining chips in negotiating for the elimination of telecom trade barriers.

Radio Licenses. Regulation of the wireless telecosm stands as an antiquated, statist ruin of the New Deal. Nobody but the federal government owns spectrum. Nobody but the FCC may decide how to use it. Nobody may sell, borrow, or lease, without the commission's say so. Moscow never exercised any powers more sweeping or inefficient than our very own Politburo on the Potomac. So...

Sell all new radio licenses at auction to the highest bidder. Sell off all existing spectrum under FCC control as soon as possible. Transfer large slabs of underused spectrum from other federal agencies (including the Pentagon) to the FCC. Then sell them off. When outstanding licenses expire, sell that spectrum too. Incumbent broadcasters will howl at the thought. Let them howl.

Authorize any owner of a radio license to sell it to anyone else. Repeal all FCC rules that prescribe how spectrum is to be used for broadcast, common carriage, or private purposes. Let broadcasters transmit data and paging. Let TV stations close shop on a Friday and reopen on Monday as wireless phone companies. Let taxi dispatchers go into interactive television.

Authorize all licensees to invoke common-law principles of trespass and nuisance in state or federal court to protect property interests in spectrum. In resolving disputes about interference, favor private suits over FCC regulation. The FCC can remain the last-resort regulator to ensure that transmitters operate at authorized frequencies, powers, and locations.

Broadcasters and Carriers. Both federal and state regulators doggedly struggle to maintain pristine lines between broadcasters and carriers. A well-defined law of common carriage remains useful—carriers take on special duties (non-discrimination) but get special privileges in return (wide immunity from defamation and copyright laws, for example). Outside the traditional realm of common carriage, however, bright lines aren't needed, and just create needless complication. So...

Authorize any common carrier to transmit anyone's content, including its own. Leave copyright laws in place. Authorize any broadcaster to carry anyone's content, not just its own. Legalize "time brokering," under which broadcasters sell air time in small increments to willing buyers.

Let broadcasters refuse to broadcast whatever they don't like,

including political messages. Let cable companies refuse to transport whatever they don't like, including broadcast channels. Abolish the abominable Copyright Royalty Tribunal and all the compulsory license laws it administers. Place cable companies under traditional copyright laws once again. If they want to retransmit anyone else's transmissions, make them buy them in the open market.

Prices. Large parts of the telecosm are already competitive today, or will be very soon. Price regulation here is a destructive anachronism. So...

Abolish all remaining price regulation of wireless services (there isn't much left anyway). Abolish all price regulation of interstate wireline services, like ATT's and MCI's (there isn't much left there, either). Whether or not the long-distance market is adequately competitive, regulation no longer does any visible good. Outlaw the filing of tariffs for any of these services. The tariffs in these markets just facilitate price fixing.

Abolish all price regulation of video services, whether supplied by cable, telephone, direct broadcast satellite, SMATV, VCR, disk, or other technology. Outlaw the filing of tariffs for these services, too.

Authorize every common carrier to meet or beat prices offered by competitors, even if that results in what would otherwise be an (unlawful) "discriminatory" price.

Universal Service. When all else fails, this is always the last-ditch excuse for regulating what should be let alone. So...

Abolish all state and federal laws that impose service obligations on new and nondominant entrants into any market. Promote universal telecom service the same way we promote universal hamburgers: by open entry and free competition.

Free Speech. Abolish any law that passes First Amendment muster only on the theory that airwaves are somehow "scarcer" than print, or that wires are "natural monopolies," or that electronic media are inherently different and less deserving of protection. The only real scarcity in the business is a creation of government itself. The answer to government scarcity is market plenty.

Peter Huber is a senior fellow of the Manhattan Institute, a columnist for Forbes, *and serves Of Counsel to Kellogg, Huber, Hansen & Todd. He is the author, most recently, of* Orwell's Revenge: The 1984 Palimpsest *(Free Press). He has done legal work and market research for regional Bell companies and other providers of telecom services.*

The Asset Test

A privatization agenda

By Robert W. Poole Jr.

The GOP sweep of both houses of Congress should make possible what has long eluded free-market proponents: a national agenda for privatizing government functions. After all, the Republicans were elected on a shrink-big-government-and-balance-the-budget platform. And, as mayors and governors across the country are demonstrating, privatization is a proven tool for doing just that.

Wasn't federal privatization tried during the Reagan years? Not really. Despite a lot of rhetoric, nothing much happened until 1987, Reagan's seventh year in office. In that year, Conrail was sold off, the only real asset sale of the entire Reagan years. In 1987, Reagan also created a "privatization czar" post in the Office of Management & Budget (which Bush subsequently abolished) and appointed a President's Commission on Privatization, whose rather tepid report appeared in March 1988, far too late to have any impact.

Besides a lack of presidential leadership, the major obstacle was Congress, which not only vowed to oppose nearly every proposed privatization measure, but on many occasions voted to prohibit the government from even *studying* such proposals. So with the startling shift of power this fall, think-tank reports from the '80s were being dusted off all over Washington. Rep. Chris Cox (R-Calif.) even proposed the creation of a Privatization Committee in the House.

Thus, it is beginning to look as if the United States might finally join Australia, Britain, France, Germany, Italy, New Zealand, and other democracies in divesting government corporations and assets to the private sector. Over the past decade, nearly $500 billion of state-owned enterprises have been sold off worldwide. The proceeds have been used to reduce current budget deficits, to redeem outstanding bonds and save interest costs, or, in developing countries such as Mexico, to fund otherwise unaffordable public-works projects.

One major component of a federal privatization agenda would be to sell off federal enterprises and assets. No one has ever attempted to assess the possible market value of the government's numerous assets and enterprises. The General Accounting Office lists 45 government corporations (including the well-known Amtrak, Tennessee Valley Authority, and U.S. Postal Service, but also such lesser-known entities as the African Development Foundation, the National Credit Union Administration Central Liquidity Facility, and the Rural Telephone Bank). In addition, there is a whole set of government-sponsored enterprises, such as Fannie Mae, Freddie Mac, and Sallie Mae, most of which already have partial private ownership. Clearly, some of these are viable business enterprises which would command billions of dollars if offered for sale. Others would either have to be radically restructured or liquidated. All told, there are probably scores

of billions of dollars to be had by selling off those enterprises that are viable.

In addition, the feds have other assets that could be liquidated. Many federal agencies have loan assets on their books, some of which have been sold over the past decade. There's probably another $100 billion in this category. There are also untold scores of billions of dollars worth of radio frequencies which could be sold off.

Then there are federal lands. Not national parks and wilderness areas, but supposedly income-producing "commodity lands" administered by the Bureau of Land Management and the U.S. Forest Service. A 1989 Reason Foundation study estimated their value at $160 billion. Environmentalists would go ballistic, but in fact some of the most successful examples of ecologically sensitive resource development occur in privately owned commercial forests and wilderness areas owned by environmental groups. Given the feds' dismal record in managing grazing and timber lands, enlightened environmentalists might see net gains in some forms of privatization.

Interestingly enough, the Clinton administration's "reinventing government" people had actually begun moving toward privatization before the November election. They proposed "corporatizing" the air traffic control system and privatizing Sallie Mae, and have begun large-scale auctions of electromagnetic frequencies, expecting to generate over $10 billion. If this faction in the White House gains the upper hand, congressional privatization initiatives may go a lot further than many pundits imagine.

Supporters of privatization at the federal level can look to state and local governments for targets. After all, America's cities and states are also bastions of socialized enterprises. A 1992 Reason Foundation study identified some $227 billion worth of municipal electric, gas, and water utilities; parking garages; airports and seaports; highways and bridges which would be attractive commercial propositions. A fledgling privatization industry has begun emerging in the past five years, both developing new facilities of these kinds using private capital and proposing to buy or lease existing facilities and operate them in a more business-like manner.

Financially strapped governors and mayors have generally been positive about this kind of privatization, seeing it as a way to "mine their balance sheets" by turning relatively unproductive physical assets into financial assets. And various studies have pointed out benefits from converting bureaucratically run enterprises into entrepreneurial ones—market pricing that would encourage more efficient use of freeways and water systems, for example, and technological innovation.

One of the artificial advantages of municipal utilities is that they can issue bonds exempt from federal (and usually state) income taxes. A privatizer must go to heroic lengths in cost-cutting to be able to offset the huge difference in financing costs created by this tax subsidy.

Several barriers have stood in the way, however, barriers which a Congress committed to shrinking big government could easily remove. One type of barrier is limitations imposed either by federal grants or by the tax code. For example, airports which get federal grants face many restrictions on how they can spend not just the federal money but all their income. And no enterprise (such as a water system) funded in part by tax-exempt bonds can enter into a management contract with a private firm for more than five years (thereby ruling out many forms of privatization involving longer-term private investment).

In 1992, President Bush issued an executive order on infrastructure privatization aimed at reducing the first type of barrier, but its provisions have not been enforced and it could be rescinded at any time. Congress could enact an improved version of these provisions into law, giving states and cities greater freedom to sell or lease these socialized enterprises.

The more serious barrier is the lack of a level playing field between taxable and tax-exempt bonds. One of the artificial advantages of municipal utilities is that they can issue bonds exempt from federal (and usually state) income taxes. For example, on $1 billion worth of bond funding, the annual debt service payments would be $20 million greater with taxable private-sector debt. A privatizer must go to heroic lengths in cost-cutting to be able to offset the huge difference in financing costs created by this tax subsidy to the wealthy investors who purchase municipal bonds.

Essentially, there are two ways to level the playing field. One would be to extend the federal tax exemption to infrastructure bonds regardless of whether the owner or developer is a public entity or a private firm; the test for tax-exemption would be the purpose to which the facility would be put. If it were an airport, a toll road, or a water system serving the public (as opposed to simply a few private users), it would qualify for tax-exempt bond financing.

Traditionally, the problem with this approach has been the U.S. Treasury (and deficit-reducers generally). The last thing they want to see is yet another "loophole" that would reduce federal revenues. But the privatization community has come up with an approach that might get past this traditional objection. Based on the report of the 1993 Infrastructure Investment Commission, they have proposed a new type of infrastructure bond (applicable to both public and privately owned projects) which would be marketed to individually directed retirement accounts, such as 401(k)s. On the assumption that investors who buy these (tax-exempt) bonds will liquidate an equal amount of corporate bonds,

the Treasury is expected to score this proposal as "revenue-neutral." A bill to this effect was introduced late in the last Congress by Democratic Reps. Dick Gephardt (Mo.) and Rosa DeLauro (Conn.), and a revised version is expected early in 1995.

The other approach, of course, would be to remove the tax exemption for revenue bonds that go to finance transportation, energy, and environmental infrastructure—the kinds that are, at least in principle, profitable enterprises. The Treasury and deficit hawks would love this because it would add to federal revenue. The privatizers would also love it, because it's more clear-cut than the very complex Gephardt-DeLauro approach.

But investment bankers and bond buyers could be formidable opponents. Their opposition might be overcome if the proposal were narrowly drawn: applying only to new revenue bonds, and only for these specific kinds of infrastructure. That amounts to just over one-quarter of the annual volume of tax-exempt bonds. But each year's new issues of taxable infrastructure bonds would add an additional $1.3 billion in new tax revenue, so after 18 years, the annual contribution to deficit reduction from this change would be $24 billion. It might be politically smart for Gingrich & Co. to nick wealthy bond buyers to this extent, while they are hacking away at overgrown social welfare programs.

Both types of privatization—selling off federal assets and enterprises and encouraging the privatization of state and local infrastructure—share the virtues of improving the economic performance of the entity in question while contributing seriously toward achieving a balanced federal budget. These virtues, in turn, are held dear by New Democrat types as well as by New Paradigm Republicans. Hence, privatization may finally have found political champions in Washington.

Robert W. Poole is president of the Reason Foundation and the author of Cutting Back City Hall *(1980), the first book about privatization issues.*

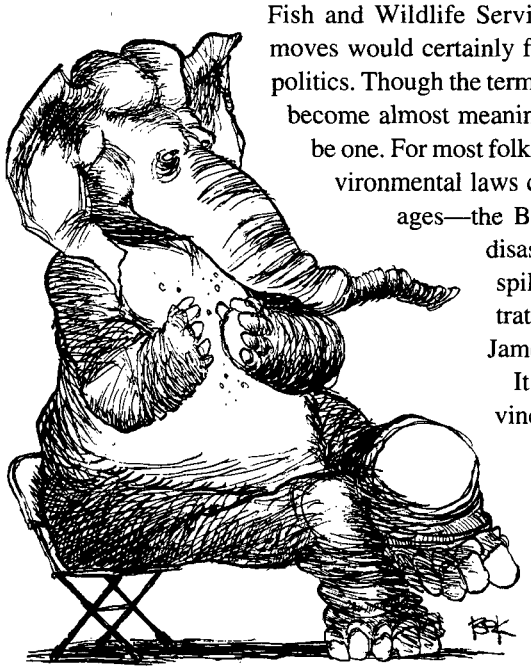
A New Environment

Braking the green machine

By Rick Henderson

On the environmental front, for libertarians, conservatives, and other property-rights and sound-science buffs, a little celebration is in order. After all, three of the biggest enemies of liberty and sensible environmental policy in the House of Representatives—California Democratic chairmen Henry Waxman, George Miller, and Norm Mineta—have turned in their gavels and lost their subpoena powers.

But it's not time to get cocky. The 104th Congress will not board up the Environmental Protection Agency or defund the Fish and Wildlife Service. Right now, such moves would certainly fail and would be bad politics. Though the term *environmentalist* has become almost meaningless, we all want to be one. For most folks, talk of repealing environmental laws conjures up scary images—the Bhopal chemical-plant disaster, the Exxon *Valdez* spill, or Reagan administration Interior Secretary James Watt.



It will take time to convince the general public that being environmentally conscious does not require massive regulations. Republicans and sympathetic Democrats should start implementing what former Rep. Don Ritter, founder and chairman of the National Environmental Policy Institute, calls "reinventing the process of environmental regulation." Devolving environmental decision making to states, municipalities, and individuals, and replacing hidebound regulations with more innovative approaches could eventually result in effective environmental policies that don't stifle individual freedom. And even if the GOP loses its congressional majorities in 1996, procedural changes this year could help bring environmental extremism under control.

So here's a game plan for the next two years:

1) Pass the "unholy trinity" provisions in the Contract With America, but cover your posteriors. The contract includes provisions on risk assessment, unfunded mandates, and unconstitutional takings of private property—three issues that could so constrain environmental regulations that greens call them an "unholy trinity."

The trinity components of the contract could revolutionize the regulatory process, especially in environmental policy. One section of the contract's Job Creation and Wage Enhancement Act requires a "regulatory impact analysis" of any new federal rule that affects more than 100 persons or will cost individuals or nonfederal agencies more than $1 million to enforce.

The property-rights component in the contract would require the federal government to compensate property owners if any new regulation reduces the value of their land by more than 10 percent.

A third section would require the budget director and the Congressional Budget Office to develop a "mandate budget" to esti-

mate how much money states, municipalities, and individuals pay to implement unfunded mandates, the regulations Congress passes without providing money to pay for enforcement. This proposal would place mandates on a level playing field with appropriated programs such as the National Endowment for the Arts or Pell Grants; if mandates are projected to run over budget, Congress will have to reduce them.

If passed, these three provisions would require regulators to set priorities before they issue new rules, give a greater role to scientific analysis in assessing risk, and allow individuals and government officials to be flexible in their approaches to environmental problems rather than obeying rigid mandates from Washington. They would also begin what the NEPI's Ritter calls a "reinvention" of federal environmental policy, making it more market oriented and less hidebound.

The 104th Congress could let regions that don't comply with the automotive-emissions components of the Clean Air Act implement remote testing of cars or use other flexible pollution-reduction plans. Tell the EPA to shove its electric-car mandates, no-drive days, and specific formulas for gasoline.

Yet these are radical departures from the Beltway's standard procedures. Greens will push the White House to veto them. So it's also wise to have backup bills in place.

Rep. Billy Tauzin (D-La.) has offered a takings-compensation bill that would mandate compensation whenever regulations reduced a landowner's property value by more than 50 percent. Another Louisiana Democrat, Rep. Jimmy Hayes, has proposed wetlands reforms that would exclude previously tilled farmlands from federal wetlands restrictions and require compensation to landowners when truly valuable wetlands are found on private property. Rep. John Mica (R-Fla.) attached risk-assessment and cost-benefit requirements to every major environmental bill that came up in the 103rd Congress, and he got a majority to back one of them. Pass these as stand-alone bills and dare Clinton (who will desperately need votes in the South and the West next year) to veto them.

And Congress could make the issue of new unfunded mandates irrelevant. Sen. Orrin Hatch, the new chairman of the Judiciary Committee, will probably propose a constitutional amendment prohibiting additional mandates. If Congress adopts this amendment, it might sweep through state legislatures before the 1996 elections.

2) Repeal retroactive liability in the new Superfund bill.

The current law makes every polluter at a Superfund site potentially liable for paying the entire cleanup costs, even if that company's actions were legal before the Superfund law was enacted. Not surprisingly, older companies with deep pockets tend to get stuck with big cleanup bills and spend a lot of money suing more-recent occupants of the sites. And there's little correlation between the companies that pollute waste dumps and those that get stuck with the bills. Using IRS data, the American Petroleum Institute calculates that oil companies pay as much as 60 percent of Superfund taxes, while the EPA says those businesses are responsible for less than 10 percent of the pollution at Superfund sites.

In the 103rd Congress, two New Hampshire Republicans, Rep. Bill Zeliff and Sen. Bob Smith, sponsored a Superfund amendment that would have repealed retroactive liability and paid for cleanups by doubling the Superfund tax rates. Zeliff, who may chair the Public Works and Transportation subcommittee that oversees Superfund, will reintroduce his amendment this year. Repealing retroactive liability in this manner would do more than limit lawsuits and other transactions costs, which eat up more than one-third of Superfund money; it would also place Superfund on a budget and force environmental officials to set cleanup priorities rather than mindlessly attempting to eliminate the last molecule of a proscribed substance, regardless of cost.

3) Repeal or reform targeted portions of omnibus bills with environmental reinvention in mind. Tauzin has proposed amendments that would greatly enhance the flexibility of the Endangered Species Act. Tauzin's proposals would, under some circumstances, let private landowners protect threatened species without surrendering the ownership of their property and require compensation to landowners in those cases which the protection of threatened species deprives owners of most economic use of their property.

The 104th Congress could also earn the unceasing gratitude of drivers everywhere by letting those regions that don't comply with the automotive-emissions components of the Clean Air Act implement remote testing of cars or use other flexible pollution-reduction plans. Tell the EPA to shove its electric-car mandates, no-drive days, and specific formulas for gasoline.

4) Remember: Your mandate is tenuous. Your majorities in each house are tiny, and voters have put you on a very short leash. If you don't deliver meaningful changes, they'll toss you out.

But even if you return to the minority in 1997, the procedural reforms you pass this year can lead to a revolutionary redefinition of the relationship between individuals and the federal government that voters will eventually appreciate. "If there was a lesson from the electorate," Ritter says, "it is that people don't think government works well, especially the federal government." You have the ball, Republicans. Don't fumble it. ®

Rick Henderson is Washington editor of REASON.

Technology Traps

Defunding the megaprograms

By T. J. Rodgers

My advice to the new Congress on technology policy is to kill government science megaprograms, get out of the technology-subsidy business, and double science and technology funding for universities through thousands of small grants. These priorities are particularly important for Republicans who find big-science wonders hard to resist.

With the possible exception of the Manhattan Project, government science megaprograms have a terrible record of return on the taxpayers' investment. Remember synfuels? This scheme to create gasoline from coal followed the classic, eight-step scenario for wasteful government megaprograms:

1) Scare the hell out of them. (What happens when the oil cartel shuts off the gasoline?)

2) Declare that the program is so big, only the government can pull it off. (Translation: No other sucker could be convinced to invest in this loser.)

3) Get expert advice. (Translation: Listen to oil industry lobbyists who are paid to know that what is good for the oil industry is good for America.)

4) Create a consensus. (Translation: Spread the pork out to enough states to get the bill passed.)

5) Execute. (Translation: Use government funds to hire a large P.R. staff.)

6) Fail.

7) Lose $88 billion.

8) Blame the Republicans for underfunding the project.

Remember the superconducting supercollider (SSC)? I debated a particle physicist from the University of Texas-Arlington on National Public Radio on its merits. He claimed that $12 billion was a cheap price to discover the sixth and elusive "top quark" subatomic particle.

I argued that the genius of the physics community would find a cheaper way to float the top quark in electric and magnetic fields long enough to take its picture. A few weeks later, Congress canceled the SSC. A few weeks after that, the top quark had its first snapshot taken at Chicago's Fermi labs. Then, a Texas entrepreneur proclaimed the $4-billion 10-mile hole in the ground created for the SSC an ideal spot for growing mushrooms.

Boeing and Lockheed have just teamed up to work on Space Shuttle II. What did Space Shuttle I accomplish to justify the next multibillion dollar investment? Certainly, it launched many satellites, but they could have been launched more cheaply with disposable rockets. Indeed, if the American taxpayer had not been forced to subsidize those shuttle satellite launches (wiping out any possible competition that would have had to pay full cost), there might now be a viable private American corporation capable of launching satellites—a boon to the entrepreneurs waiting in line for years for a satellite launch.

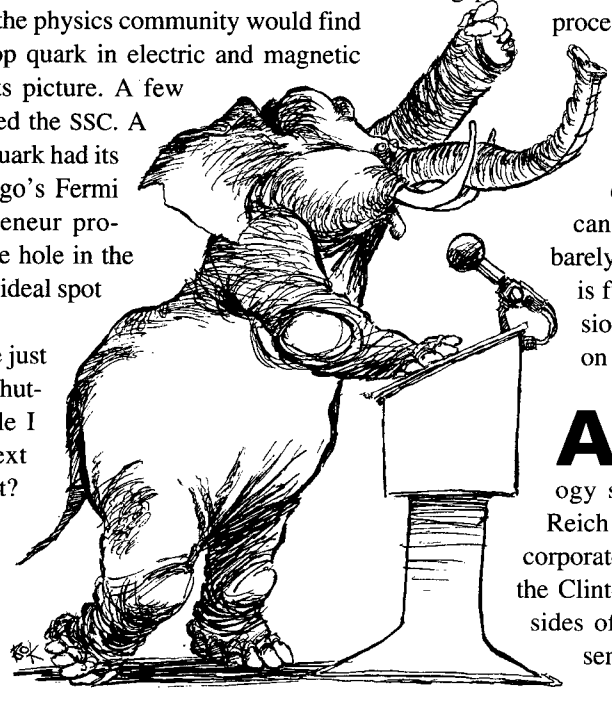
NASA has run out of useful work for the shuttle, let alone its successor. So we are bombarded by reports of German and Russian astronauts using the Canadian robot arm to perform ecology experiments. The large P.R. efforts that form in step 5 of all government megascience endeavors have learned that spreading the pork (step 4) now must be both an international and a politically correct endeavor.

Some shuttle experiments—at a cost of about $500 million each—are simply ludicrous. Who cares or will ever care if spiders spin their webs differently in zero gravity? And technology con men are having a field day. One University of Houston professor convinced NASA to spend $2.5 billion on five shuttle flights to make space-grown gallium arsenide (GaAs) semiconductor wafers, the starting material for GaAs computer chips. The flight produced five wafers at a cost of about $100 million each. The promise is that in the near-perfect vacuum of space, the shuttle will produce GaAs semiconductor wafers nearly perfect in crystal structure. Eventually, the space-grown wafer cost is projected to drop to $10,000 per wafer.

I am a member of the board of directors of the largest GaAs chip maker in the United States. Here are the facts:

1) Current terrestrial GaAs wafers cost $500.

2) The hypothesized improvement in the crystal structure of space-grown wafers is irrelevant, since the GaAs chip manufacturing process destroys and rebuilds the crystal as part of the process.



3) All GaAs companies would go out of business if their wafers cost $10,000 each.

The basic problem with megaprogram funding is that particle physicists, space scientists, and big-company technology experts can have their way with a lay Congress that barely comprehends the complex technologies it is funding. And even that minimal comprehension comes only when huge sums are expended on ever-increasing congressional staffs.

After eliminating the big-science megaprograms, Congress should attack the technology subsidies that Secretary of Labor Robert Reich reasonably calls "corporate welfare." The corporate subsidy most often touted as a success by the Clinton administration (yes, they speak on both sides of the issue) is Sematech, the Austin-based semiconductor research facility that has been

given $1 billion in two five-year grants so far. A reasonably well-run organization, Sematech recently announced it would not seek a third $500-million grant. (Of course, the original Sematech promise was that it would not come back to Congress the second time.) The Clinton administration believes Sematech should be replicated in other industries. But its record is not one that warrants replication:

• Sematech has as members only 12 of America's 200 semiconductor companies.

• Two of Sematech's original 14 members quit because even with their dues halved by government subsidy they could not justify the investment.

• The big companies that control Sematech's board designed the consortium's dues structure to prevent small, entrepreneurial companies from joining. A $20-million chip company that may someday be the next Intel must pay 5 percent of revenue, while Intel itself pays only 0.15 percent of its revenue—a 33-to-1 ratio, which is the primary reason so few companies joined Sematech originally. Of course, Intel, which makes over $1 billion a quarter in pre-tax profits, needs the subsidy a lot less than the small companies that were excluded. But the political system provides the opposite results: Only big companies can muster the lobbying resources to convince Congress to subsidize them. And why would they share the pork with the upstarts?

• Sematech used its government subsidy to attack directly the other 100-plus American chip companies that were not Sematech members. After the checks were signed and the TV lights turned off, Sematech began granting funds to companies that make the critical equipment for the production of computer chips—in return for contracts to hold back the most advanced equipment from all but Sematech members for up to one year. (The deals, which Sematech denied repeatedly, were discovered during a lawsuit.) It is no wonder that Sematech insisted on and received antitrust immunity as part of its funding legislation.

If Sematech's silicon-chip subsidy represents the Clinton/Gore model for government subsidies, it's up to the new Republican Congress to stop its replication. Let's not copy a system that allows well-heeled corporations to use their lobbying clout to entrench themselves with taxpayer subsidies, to the detriment of new companies with new ideas.

The flow of well-educated technologists into industry is more important to American high-tech businesses than are subsidies to prop up ailing giants. By cutting out science megaprograms and corporate technology subsidies, Congress can cut the federal budget and increase university research funding.

The flow of bright, well-educated technologists into industry is much more important to American high-tech businesses than are subsidies to prop up ailing giants. And by cutting out science megaprograms and corporate technology subsidies, the new Congress can both cut the federal budget and free up funds to increase university research funding.

Many Silicon Valley venture capitalists—no friends of big government—believe that the defunct DARPA (Defense Advanced Research Projects Agency) was one of the most effective government technology programs. They credit it with funding such winning pre–venture-capital investments as the UNIX computer operating system work done by Sun Microsystems founder Bill Joy.

DARPA funded my doctoral studies on transistor physics at Stanford. The high-performance chips I worked on may or may not have improved national defense, but I became one of the hundreds of DARPA-funded Ph.D.s who flooded into Silicon Valley from Stanford and Berkeley.

What caused an unlikely agency like DARPA to provide decent return on government investment?

• DARPA conducted classified military research, which kept Congress on a need-to-know basis. Thus DARPA projects avoided having to spread the pork or to hire a P.R. staff to maintain viability.

• DARPA contracts were awarded by competent technical experts on a merit basis without much political consideration. DARPA also had a "customer," the Pentagon, that had at least a long-run interest in the usefulness of what it funded.

• DARPA tended to fund a large number of small programs, rather than wasteful megaprojects. The agency was on the right side of the economic tradeoff that demands the sacrifice of 1,000 chances to fund the next Bill Joy/Sun Microsystems in order to fund one superconducting supercollider.

Unfortunately, today's ARPA, the non-defense version of the old DARPA, is drifting back into politics. Members of Congress fantasize about "dual use" (military and commercial) technology, with the hope of picking losers and winners, the latter preferably in their districts. There are debates about where the "retraining" funds should be spent when military programs are shut down.

Some of this is inevitable—ARPA's mission is hazier and more politicized than DARPA's. But the agency's best chance for success is if Congress leaves it alone, allowing it to set technical priorities and give out thousands of small grants to universities based only on a peer-review meritocracy.

The new Congress has an opportunity to shrink the federal government and simultaneously help America's technology industries. It involves getting politics out of the laboratory and supporting education on a non-partisan, merit basis. ◆

T. J. Rodgers is president and chief executive officer of Cypress Semiconductor.

MICHELON

STATION BRAKES

The government's campaign against cable television

By Thomas W. Hazlett

When you next settle into your cushy La-Z-Boy Recliner, hoisting a nice cool one after a trying day in the real world, try this: Aim your trusty remote and channel surf for some news, information, or public-affairs programming. Chances are that you will light upon *Crossfire* or *Capital Gang* on CNN, *Equal Time* or *Pozner & Donahue* on CNBC, a college course offering on ME/U, a history lesson on the Learning Channel, a biography on A&E, a sexual harassment trial on Court-TV, congressional hearings on C-SPAN, or a Noam Chomsky speech on C-SPAN2. Perhaps you will zero in on *Politically Incorrect* or *Women Aloud* on Comedy Central, or flick your way over to a "Rock the Vote" rally on MTV. Or you may just get briefed by Headline News.

Don't be alarmed, but you have just committed an incendiary political act of revolutionary import: Every one of those viewing choices was not so long ago a target of the U.S. government. If the regulatory policies crafted between 1959 and 1972 had continued, Americans wouldn't be able to indulge in such antisocial viewing choices. Cable programming was then officially judged a menace to society, and the Federal Communications Commission had launched a regulatory jihad against it. Like all holy wars, this offensive was undertaken in "the public interest."

And you thought you had First Amendment rights as an American patriot. You *have* been watching too much TV!

This episode is of more than historical significance. Because in today's world, hardly a millisecond lapses without yet another government or foundation report issued extolling the frightening challenges posed by the emergence of Information Superhighways. The theme of each policy analysis is strikingly symmetric: The explosion of competition threatens to divide America into information-rich and information-poor. Having divined a crisis, these policy entrepreneurs leap to the rescue. We will, they promise, enforce strict universal access rules and save society from this horror-strewn high-tech future. We will intercept the destructive market forces, and mold the emerging technologies into our regulatory model. We will shape the new communications network to serve the public interest.

The FCC has been there, done that. In 1966, the high holy days of anti-cable rulemaking in Washington, the commission boldly premised its suppression of wired TV (then called CATV, for community antenna television) thusly: "CATV systems cannot serve many persons reached by television signals. [Today, cable passes more than 96 percent of U.S. homes.] Persons unable to obtain CATV service, and those who cannot afford it or who are unwilling to pay, are entirely dependent upon local or nearby stations for their television service. The Commission's statutory obligation is to make television service available, so far as possible, to all people of the United States on a fair, efficient, and equitable basis....This obligation is not met by primary reliance on a service which, technically, cannot be made available to many people and which, practically, will not be available to many others. Nor would it be compatible with our responsibilities to permit persons willing and able to pay for additional service to obtain it at the expense of those dependent on the growth of television facilities for an adequate choice of services."

Cable's indictable offense was that it threatened the revenue earned by UHF (ultrahigh frequency) television licensees. Cable operators were accused of "fragmenting" and "siphoning" the audiences needed by UHF. These stations, placed on the higher frequencies (then channels 14 to 83), had been given an almost impossible assignment by the FCC: to compete in local TV mar-

MARC MICHELON

kets head-to-head with VHF (very high frequency) signals that can be far more easily received. An alternative licensing scheme, which would have made local TV markets either all-VHF or all-UHF (thereby making it easier for UHF to survive) was specifically rejected by the commission. But the FCC, having brutalized UHF on its own, certainly did not want cable competitors piling on. The success of UHF had been determined to be in the public interest.

To protect a universal service never actually provided by UHF, the FCC swatted down a cable industry which—when deregulated years later—would actually deliver the FCC's stated goals. In short, to save "universal service," the government elected to kill competition. It succeeded only in the latter, cheating the American public of the bountiful choices made possible by technology. Today, as new opportunities fly out of Silicon Valley at the pulse rate of light waves over fiber optics, they too must circle in public-policy holding patterns. Social planners, we are told once more, must carefully contemplate the ramifications of robust—and unsettling—competitive rivalry in advanced telecommunications networks. Today's Information Superhighway appears stymied by roadblocks remarkably similar to those used to thwart yesterday's television interstate.

Strangling Cable in the Crib

The federal government's campaign against cable television began in the industry's earliest days. Although television was first demonstrated as technically viable in the 1920s and the British Broadcasting Corporation had begun regularly scheduled shows in the 1930s, TV was slow in coming to the United States. By 1948, only 107 licenses had been issued, and only 16 stations were broadcasting. (Today, there are over 1,400 operating in the United States.) Even this was too speedy for the FCC, charged with regulating this market under the 1934 Communications Act. It froze its licensing actions in 1948 pending a grand master plan for the television marketplace, issued in 1952.

Cable television arose during this freeze, sprouting in places where the transmissions of then-licensed stations didn't reach. Cable systems offered no programming of their own; they just pulled down stations from the nearest available mountaintop or microwave link and ran them to homes. Because cable extended broadcast signals to greater numbers of viewers, the broadcasters loved it.

Twice during the 1950s the FCC staff recommended that the commission regulate cable; twice the commission declined. Why bother asserting jurisdiction over a technology that didn't even use the airwaves? By mid-1959, though, the commission began to change its mind. Broadcasters, coincidentally, had become less cable-friendly when a few daring entrepreneurs began inserting new, non-local signals on cable systems. This bold marketing move gave subscribers an actual choice between local broadcast fare and something different. Very uncool. The FCC swung into action; cable had stepped across a Regulatory Line of Death.

One major battleground was San Diego which, owing to its hills and valleys, was one of the first urban areas to be cabled in the United States, beginning in 1963. San Diegans could receive the three networks, but no independents. Los Angeles, on the other hand, enjoyed seven independent stations, and all seven were carried by four different CATV systems in San Diego by 1966. The arrival of L.A.'s indies, plump with sports at a time when San Diego had no big-time teams other than the Chargers of the American Football League, was a treat for viewers. Indeed, in a 1966 FCC proceeding the "smoking gun" evidence of cable's nefarious impact was that, in one small area where cable had been available for just three months, "Of the 159 homes in that area, 58 were wired for CATV—and this [a local broadcaster pointed out] 'is in an area where all three stations can be satisfactorily received.'"

Now that was a crisis. If allowed to go unchecked, viewers might have the ability to opt out of their government-licensed broadcast "choices." The alarm was sounded when the FCC certified that viewers did indeed like the L.A. stations' programming and appreciated the opportunity to watch it. The FCC wrote: "During the period 5 p.m. to 6 p.m., Monday through Friday, there was no duplication by any Los Angeles station of programs broadcast in San Diego and the cable subscriber could watch any one of 10 different programs. Among nonsubscribers interviewed, 95 percent of those who watched television during that hour watched one of the San Diego stations. Among cable subscribers the Los Angeles stations accounted for 52 percent and the San Diego stations 48 percent."

The commission was alarmed by this consumer choice thing and projected that allowing cable to bring extra signals into a market would fundamentally threaten the viability of broadcasters. Since broadcasters had received airwave rights at no charge only because they had promised to abide by their obligations as public trustees, damaging broadcasters meant destroying the public interest itself.

Starting with the so-called *Carter Mountain* decision (1962) and continuing through rulemakings in 1965, 1966, 1968, and 1970, the FCC handed down a series of regulations that placed onerous burdens upon cable operators attempting to do business in the top 100 U.S. television markets (with about 90 percent of U.S. television households).

In 1966, the commission stated its cause for concern about marketplace competition in ominous bureaucratic tones: "We must thoroughly examine the question of CATV entry into the major markets, and authorize such entry only upon a hearing record giving reasonable assurance that the consequences of such entry will not thwart the achievement of the congressional goals. We cannot sit back and let CATV move signals about as it wishes, and then if the answer some years from now is that CATV can and does undermine the development of UHF, simply say, 'Oh well, so sorry that we didn't look into the matter.'"

That consumers might like to be "fragmented" or "siphoned" —indeed, that only willing channel-flippers could be fragmented or siphoned—was not a big concern. While the First Amendment might have looked slighted by this ham-handed government intervention in the workings of the electronic press, the scholars at

C-SPAN

the FCC had a handy explanation of how their scheme fit tidily under the Constitution. It furthered First Amendment *values* to have government provide for the goals sought by the Founding Fathers: diversity of expression, local control of the media, and fairness. This, after all, was how the commission and, generally, Congress defined the public interest.

By buying that line, the courts allowed the commission to go into the editorial business in a funny way: While the FCC couldn't directly tell broadcasters what to air, it certainly could hammer them with regulations in "the public interest." So it embarked on various schemes to encourage what the FCC dubbed non-entertainment programming—news, talk, and public affairs. In the commission's scheme, informational programming was inherently non-entertaining and, hence, unprofitable. Regulators had to force the market to supply this meritorious product—to uplift the public and improve our democracy—despite the financial interests of licensees in producing a steady stream of police dramas, sitcoms, movies, and sports.

The regulators' lament was that greedy licensees had to be carefully watched by publicly minded civil servants such as themselves. Left to their own devices, the vile private broadcasters would think only of their own profits and produce a shoddy product. In fact, we had already arrived in this video sewer, which Newton Minow, the greatest FCC regulator of all, famously decried as "the vast wasteland." Running the Kennedy administration's FCC, Minow beamed with regulatory pride in coercing broadcasters to do more of what they inevitably tried to stint on. "News, information, and public affairs programs are the heart of broadcasting in the public interest," he said in 1961. Indeed, a chapter in his 1964 book, *Equal Time*, is titled: "News, News, Never Enough."

Minow claimed that the FCC did not engage in censorship because that required *prior* restraint; all the FCC did was threaten to yank a broadcaster's license after the fact. Stalin would have loved this definition of censorship; it surely did not take long for the editors of *Pravda* to notice that the ability to write articles consistent with the views of the sovereign was a survival trait. Indeed, the most ruthless tyrant need engage in relatively little actual enforcement and perhaps no prior restraints whatever.

Minow claimed that licensees had been regulated far too loosely in the past, and that—thanks to the emergence of earnest and careful overseers imbued with the spirit of the New Frontier—a new ship of state was about to sail: the *S. S. Minow*. The Minow FCC would not kowtow to private profiteers. The new deal embarked upon in 1961 would, in Minow's words, encourage "local expression...the presentation of controversial issues ...educational and political shows, local news and programs for children." These were almost the precise words that the FCC had spoken for decades when describing its mission, but Minow really meant it. With new boldness and courage, the re-energized FCC immediately set out to make its point by dealing a near-fatal blow to cable competition. Cable was siphoning off audience share from FCC-regulated speakers and messing up the entire FCC plan.

That the vast wasteland was the logical and foreseeable product of just the industry structure that FCC policies had mandated merited no investigation in "the public interest." Sensationally, the very industrial arrangement that made lowest-common-denominator programming the order of the day was at that precise moment under attack from agents of creative destruction lurking in the competitive marketplace—an attack that Minow's regulatory warriors would gallantly fend off for two wasteland-infested decades. Greedy, bottom-line absorbed capitalists were champing at the bit to give the American public informational programming and localism and diversity; it was the FCC that resisted—to protect "First Amendment values."

Politically Incorrect

The Cable Communications Policy Act of 1984 was essentially written by the cable industry, and the happy president of the National Cable Television Association posted a framed copy of the legislation on his wall as a sort of hunter's trophy.

Abandoning The Plan

Give the FCC credit: They stuck to their story. They hummed it like a mantra: "diversity, localism, fairness; diversity, localism, fairness...." The federal courts even bought it for awhile, curiously allowing the commission to expand its regulatory reach over cable, which it had no statutory power to control, far beyond what it had been able to regulate in broadcasting, which it was explicitly created to control. But the economics of competition were too strong and the cable regulation palace crumbled in the deregulatory wave of the mid- to late-1970s.

And then a curious thing happened: Americans finally tuned into unlicensed, unregulated television.

It came to them via wires, and no FCC-regulated airspace was involved. The product was sold on a subscription basis; there was no "pervasiveness" involved. Hence, the courts finally struck down the FCC's attempt to regulate the speech that occurred over such wires. And, due to the deregulation of satellites under the "Open Skies" policy in the early 1970s, it became possible to distribute new programming for cable systems on a cheap, na-

CRAIG BLANKENHORN

tionwide basis. In 1975, Home Box Office took the opportunity; in 1976, Ted Turner's WTBS followed suit. Cable was still rather iffy, since federal regulation had the genie bottled up. But as the anti-cable regulations fell away in 1977, 1978, and 1980, massive new investments came in: New cable systems were built, new satellite networks launched.

It took 30 years for the cable industry to reach 18.7 percent of U.S. homes by 1978; by 1984, over 40 percent of Americans subscribed. Today, some 60 percent do. In 1978, there were only eight cable networks; by 1984 there were 47. (By 1993, there were 99.) Even during the worst recession since World War II, consumers were ravenous for video choices, and those avaricious, fast-buck television operators were eager to give those choices to them. The Information Superhighway was beginning to take shape in a field the FCC had so recently attempted to strip mine.

The rush to wire America's cities was on and, not surprisingly, city councils attempted to step into the shoes of the federal regulators. Municipal officials, feeling as New York Mayor John Lindsay had when he remarked that cable franchises were like "urban oil wells beneath our city streets," offered exclusive licenses to those companies willing to ante up most generously. Cable firms experienced a new-found interest in funding drug treatment centers, public television, local video productions, tree-planting efforts, and art museums. Cable executives became quite civic minded, regularly attending political luncheons and contributing eagerly to $100-a-plate dinners. They enjoyed politics so much that they hired thousands of local government aides, officials, and ex-officials. And they invested in people, particularly people with municipal clout. "Rent-a-citizens" popped up everywhere—the cooperative folks who were given stock at preferential terms by cable companies aspiring to win local franchises. The ex-city councilman or the downtown lobbyist or the manager of the local PBS station were prime candidates. If their team won the franchise their stock would be worth zillions; if they lost, zippo. It was an excellent incentive system, and large cable firms routinely dished out between 5 percent and 20 percent of the stock in local subsidiaries when engaged in tough franchise competitions.

Local pols did provide some drag on progress, but they were impotent to stem for long the ferocious public demand for the new technology. At first, the regulators were a nuisance. Then they were irrelevant. By the time the nation was wired—71 percent of the country had access to cable by 1984—Congress pre-empted local regulation of cable. The Cable Communications Policy Act of 1984 was essentially written by the cable industry, and the happy president of the National Cable Television Association posted a framed copy of the legislation on his wall as a sort of hunter's trophy.

The measure, sponsored by then-Rep. Timothy Wirth (D-Colo.), often called the congressman from TCI (Tele-Communications Inc., the largest U.S. cable operator, is headquartered in Denver), eliminated local rate controls and virtually ensured franchise renewals for cable companies. It also mandated that new competitors obtain a municipal cable franchise before leaping into the market, and it barred the likeliest cable competitors—local telephone companies—from providing video service. This was "deregulation" the way corporate lobbyists believe it ought to be: Protected from competition, cable companies could exploit their local monopolies to the hilt.

How embarrassed the regulators must be to observe that even this worst-case scenario—franchise-protected monopolists offering unregulated service at free-market prices—produced a bounty for consumers when compared to the regulated alternative. The 1984 Act deregulated rates as of December 29, 1986. Even though real prices for cable service rose 36.5 percent from 1987 to April 1991, operators added new channels and higher-quality programming so rapidly that consumers were better off. The proof is in TV customers' response to the new higher-priced but meatier package. Consumers responded positively: Whereas only 56.5 percent of households passed by a cable subscribed in 1984, that percentage jumped to 59.2 in 1988. And whereas basic cable networks garnered but a 17 share of television viewers (looking only at households with cable) in 1983–84, they recorded a 35 share in 1990–91. The quality of cable, spurred by huge increases in programming investments—basic cable network spending by operators surged from $325 million in 1984 to $1.72 billion in 1991—was rising faster than prices. That judgment was rendered not by cable operators or government regulators, but by the consuming public.

And just what was the public tuning in to watch? More movies, sports, police dramas, and sitcom re-runs on USA and the superstations such as WTBS and WGN. Recently released movies over HBO and Showtime. Blue movies on Playboy and adult movie channels. And more sports on ESPN and regional

Larry King Live

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Larry King Live gave us a textbook application of how television could advance First Amendment values. A "town-hall" forum never existed under the regulated broadcast structure. It simply didn't make economic sense under "the public interest."

sports networks.

But there was something more on cable. There was CNN, considered impossible at its inception in 1981. Everyone knew that news was too expensive to program for small audiences, particularly 24-hour, around-the-globe news. It could never be profitable—that's why you needed the government to force broadcast licensees to provide this kind of stuff. But Ted Turner, a quirky roll-the-dice risk taker, figured out that by paying newscasters less and by spinning off news clips to nonaffiliated outlets, he could make money. By 1985, he did.

He does it both with his Headline News, a rapid-fire capsule format of major domestic and international stories, and with the original Cable News Network. CNN, beginning inauspiciously, became the TV network of record with its dramatic coverage of the 1991 Gulf War. Its ability to cover a story for hours on end allows it to provide a news product unique in the history of broadcasting. CNN, more than any other network, shows how the economics of television have fundamentally changed. It is cheap and easy for CNN to stay with a breaking story: It doesn't need to appeal to a mass audience. Indeed, while the three broadcast networks were routinely able each to get 30 percent of U.S. viewers to watch their shows in the late 1970s, CNN's brass is delighted if it gets 2 percent. A 5 percent share, and watch out: Ted's going to kiss his TV set!

Once CNN gets a news story with widespread popular interest, it can stay with it virtually forever. It doesn't have the opportunity cost the networks have—20 million or 30 million homes pining for some (Hollywood) cops-and-robbers. Suddenly it is Ted Turner's yacht—a brash, chaotic, and entrepreneurial vessel—setting the pace in the modern television market. The *S. S. Minow*, a government-issue junk, was shipwrecked back on Gilligan's desolate island, victim of a failed voyage and now but a distant memory in the new Information Age.

CNN isn't just news—it's diversity of expression. *Evans & Novak*, *Capital Gang*, and *Both Sides with Jesse Jackson* allow an idiosyncratic group of pundits to go their merry way on politics. *Reliable Sources* examines the role of the media, bringing in liberal and conservative journalists and media critics to debate the performance of the press. *Larry King Live*, *Inside Politics*, and *Crossfire* are daily shows dealing with political and cultural issues from opposing viewpoints. *CNN & Company* typically presents the viewpoints of three women and has a female moderator. *Talk Back Live* is an experiment in interactive television, allowing citizens to call, fax, or e-mail their views on the issues of the day.

When *Larry King Live* hosted the historic Ross Perot/Al Gore debate on NAFTA in late 1993, it gave us a textbook application of how television could advance First Amendment values. Similarly, the show played an integral role in the 1992 presidential election, providing the platform on which Ross Perot announced his independent presidential candidacy, while giving both Bill Clinton and George Bush the opportunity to interact via call-ins with American voters. This was a "town-hall" forum that never existed under the regulated broadcast structure. It simply didn't make economic sense under "the public interest."

The 1992 elections were a watershed in the CNN experiment. This unlicensed network, with no obligation for informational programming, without any equal-time requirements, subject to no Fairness Doctrine, without any public trusteeship responsibilities whatever, was the network to: a) be judged the "most believable" by U.S. television viewers, according to the Times Mirror Center for the People & Press; b) be deemed "best news source" and "best campaign coverage" among electronic networks by the *American Journalism Review*; and c) receive a $3.5 million grant from the Markle Foundation for news evaluation of presidential campaign advertising. This latter achievement was perhaps the most telling. The Markle Foundation is a very prestigious, nonpartisan, good-government institution that promotes research and public affairs to advance communications, particularly in the political realm. When setting about to fund an effort to monitor the claims made by candidates' ad spots, it attempted to do business with the Public Broadcasting Service. Talks broke down; Markle found PBS too political and bureaucratic.

The foundation then outraged many in the news business, and many more in the nonprofit sector, when it bestowed its generous grant upon a commercial enterprise—Turner Broadcasting. Rare is the foundation that tosses its cash around to profit-making businesses. But CNN performed beautifully, using the grant to create a weekly series during the 1992 presidential election cycle featuring objective analysis of the various campaign spots—CNN's "ad police." The underlying message was even more important: According to the revealed preference of America's communications scholars, the unlicensed, unregulated network was outperforming both the commercial networks and the subsidized public broadcasters in its *public service*.

In the international realm, the liberation of America's wireline press has had enormous impact. CNN, the world's first unlicensed, unregulated electronic news network, has destroyed old barriers and erased traditional borders with its low-cost, round-the-clock, real-time access to global events. Not only does CNN bring international news events to millions of Americans, it has injected American influence into the far nether reaches. Boris Yeltsin himself credits CNN's worldwide telecast of his dramatic lecture to the tank commander in the August 1991 coup as the defining moment in the Soviet Union's monumental crash and burn. Now *there's* a First Amendment value.

Other cable nets have arisen to fill out the program schedule on your local cable television dial, and the diversity of choice is astounding. Try CNBC for a host of political talk shows, including *Equal Time*—curiously, found on a network with no equal-time requirement. *Pozner & Donahue*, *Tim Russert*, and *Cal Thomas* provide Americans with news analysis from the socialist to the fundamentalist, with a batch of arrogant inside-the-Beltway types tossed in the middle. (Averaging just 173,000 viewing homes per night, the network is run so economically that it will make its owners $25 million this year.) Try Comedy Central for the clever and much-needed *Politically Incorrect*, Court TV for live coverage of a wide range of fascinating trials, complete with expert commentary. And check out C-SPAN and C-SPAN2 for a

TOP RIGHT: CNBC

phenomenal plunge into wonk-heaven: nonstop, commercial-free public policy. Congressional sessions, think-tank conferences, political speeches, journalist roundtables—even re-enactments of all seven Lincoln-Douglas debates. And it is scrupulously bipartisan; indeed, the network makes repeated use of writers for such disparate think magazines as *The Nation* and *National Review*. On one November day, I switched from C-SPAN, televising an analysis of the GOP congressional sweep by political strategist William Kristol and noted political scientist Everett Carll Ladd, over to a hoary dismissal of everything American by the one-and-only Gore Vidal on C-SPAN2. To me, *that's* entertainment.

Beyond this rich mixture of information and public affairs, a broad range of special interests are also served by the unregulated media. Lifetime is a cable network devoted to women's perspectives, Black Entertainment Television to African Americans, Nickelodeon and the Cartoon Channel to children, Galavision and Telemundo to the Spanish-speaking, The Learning Channel and ME/U (Mind Extension University) to educational programs. Gay Entertainment Television is now available in 7 million of the 60 million U.S. cable homes, and scads of new specialty program services are on the launch pads.

The intellectual establishment in mass communications sees absolutely nothing to cheer about in this phenomenal new diversity. It furiously attacks the growth of the unregulated media, denounces the expansion of viewing choice on cable as so many sitcom reruns and home shopping bazaars, and pens diatribes against the alleged increasing concentration of media ownership. This is appallingly bad scholarship, as even the most casual investigation will show. Indeed, it is on the unregulated media such as C-SPAN that a rabble rouser such as Noam Chomsky roams free to expose the evil conspiracies that lurk all about his world.

The ironies are too rich for my diet. How delicious to catch Jesse Jackson on his CNN show denouncing market competition as so much "Reagan-era deregulation." At long last, to find one man in this materialistic world who is willing to so completely ignore his own self-interest. After all, the Reverend's previous show biz effort fizzled on syndicated broadcast TV, canceled as a ratings flop. He was snatched from talk-show oblivion by CNN, a network whose niche audience was tailor-made for a political man with a minority point of view. But the Rev. Jackson is influenced not a whit by his career windfall: He stands up for what he believes in.

Not so courageous, Jeff Cohen. When I debated Mr. Cohen, director of a left-wing media watchdog group called Fairness and Accuracy in Reporting some three years back, he dismissed my paean to competition, totally unconvinced that deregulation of cable television had had any positive impact. He did concede that CNN was, indeed, the one network that allowed him a platform from which to spout his out-of-the-mainstream views. "But that is not because of any commitment to free speech," he emphatically insisted, "but only because they have so much time to fill."

I had never felt so hopelessly inept as a teacher of economics. Time to fill! Abundance! Low opportunity cost! Regulators were never able to overcome the basic laws of economics—that's the whole enchilada. Ted Turner is not a great thinker, a fine gentleman, or a saint committed spiritually to the oracle of free speech. He is a businessman. And in the age of channel abundance, his profiteering instincts are best satisfied by stuffing his two 24-hour all-news nets with as much informational programming as his cheap little soul can muster.

Economic myopia is not only a malady of the left. Perhaps the most paradoxical CNN mainstay is *Crossfire* co-host Patrick Buchanan. When he served as a presidential aide and speech writer in the Nixon White House, he was assigned to hurl complaints over perceived news bias not to the networks, but to the FCC. (Don't tell off the worker you're mad at. Scare 'im good: Tell his boss!)

Pat's sordid regulatory past is ever so juicy. Here is the man who is now able to enjoy national celebrity sufficient to mount a serious run for president of the United States owing to his perch upon the unregulated branch of the electronic media. Whereas he was once an ardent champion of the Fairness Doctrine, Buchanan today opposes it—quite frankly, he admits, because once he thought it would benefit conservatives to have government supervision of the press, where today (given the success of conservatives on radio and TV) he feels differently. Buchanan's ideology, such as it is, will not likely be confused with Voltaire's.

The Triumph of Cable and UHF

Despite the huge gains made by cable, we haven't heard much lately about the nonviability of UHF. The whole premise of anti-cable regulation—to make the marketplace safe for UHF—was a sham. UHF *needed* cable to make its signal clear and friendly, and UHF stations became highly profitable in the era of cable's explosive growth.

In fact, it wasn't until 1986—31 years after the FCC's TV allocation scheme killed DuMont, a fourth broadcast network then operating—that a network to rival ABC, CBS, and NBC was financially viable. The arrival of Fox was directly linked to the enhancement of UHF stations over cable; another nationwide broadcast network was finally possible.

From its inception, the anti-cable policy was a product of intense lobbying from VHF licensees, which simply used the weakling UHF broadcasters as poster boys. Even at the time, a number of economic studies predicted that UHF would prosper as cable spread. (And you thought economists couldn't make successful predictions.)

So cable has gained the freedom to compete against broadcasters, and despite the collapse of the FCC's plan, the consumer's interests seem to be served. Unfortunately, cable interests quickly discovered that they could profit by employing against others some of the very same gimmicks used to keep them down (hey, go with what you know!). By the late 1980s, various cable competitors were being locked out of local video markets via a host of anticompetitive tricks. The local cable monopoly was a problem, and everything we had learned—about TV mar-

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kets and about Washington—suggested that competition, not regulation, would serve consumers best. No matter. The failed policy of rate regulation was reintroduced in the Cable Act of 1992.

The chief backer of the law was none other than the National Association of Broadcasters. Why would broadcasters—longtime competitors of the cable industry—want to lower the price of cable programming? How lovely; at long last, an industry that altruistically wants to help the people, and cares not if it drains viewers—and, hence, revenue—from its own coffers. In truth, the NAB was convinced by the regulation evidence: Deregulation had actually spurred cable sales and ratings. Rate re-regulation would likely reverse the trend.

And so it did: 1993 was the first time in a decade that the ratings of the Broadcast Three rose while the combined ratings for basic cable were frozen. The scam worked.

Rate re-regulation has deterred investment in high-quality infrastructure, has prompted cable operators to furiously reconfigure and divide their offerings into tiers, and has led to wholesale substitutions of low-quality programming for high-quality. For instance, while C-SPAN disappeared from more than 4 million homes, about one-tenth their subscribership, home shopping network stocks have been on fire. Cable systems, with per-channel prices capped by the 1992 Act, simply cut some stations and added others, leaning toward those with greatest financial reward. Cable systems don't even pay for home shopping nets —instead, they share a cut of the take.

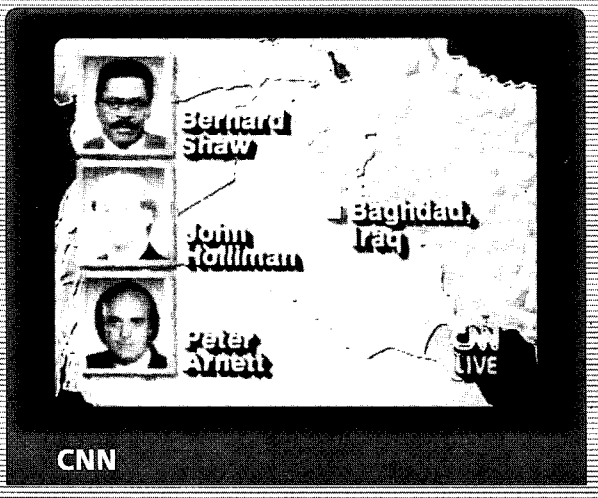
But the regulatory drag, while delaying progress, cannot stop it. The cable industry is exploiting loopholes, both economic and political, which will allow it to make mincemeat of the rules. For a time, subscribers will suffer marginally worse viewing choices on the cable; over a few years, the constraints will drift away as so many old Washington lawyers riding off beyond the Beltway. And competition to cable—from "overbuilders," (the industry pejorative for competitors), direct broadcast satellites, wireless cable operators, and telephone companies—will crash down on the local monopolies, creating new and exciting options for customers.

Most important, they will offer choice. Choice, of course, is not something that the gung-ho regulators of broadcasting were ever comfortable with. They thought choice was too important to be left to the viewing public, that competition would only fragment and siphon the market shares of the regulated.

That was disastrous, so the policy geniuses told the courts, because greedy licensees were only concerned about profits, and there was little money in informational programming. So why not grant these small, narrowly interested men the opportunity to supply entertainment fare only on the promise that they deliver news and public affairs, political debate, educational information—above all, a diversity of viewpoints? This regulatory bargain was so fundamental to our democratic way of life that entire industries had to be rendered essentially illegal to protect the plan.

That plan failed. Not somewhat, or mostly, but abysmally, and for 20 years its sponsors fought tenaciously against the suppliers who would deliver the very product which the plan was ostensibly crafted to deliver. The lessons of this regulatory debacle have, sadly, not been popularly absorbed. Re-regulation was enacted in 1992 without a wisp of embarrassment.

And the construction crews erecting the Information Superhighway today stand idly by, while policy makers subject advanced telecommunications networks to the same regulatory hurdles they once imposed on cable. No one will be allowed to enter new markets, entrepreneurs are told, until it can be proven that no one will be hurt. The phantom risk of lost UHF has been replaced by horror stories about the "information have-nots."



But there was something more on cable. There was CNN, considered impossible at its inception in 1981. Everyone knew that news was too expensive to program for small audiences, particularly 24-hour, around-the-globe news.

We have seen the accuracy with which industrial planners pinpoint competitive fallout, and we should never forget the track record: Their aim stinks.

Yet the regulators were right about one very important matter. Popular access to diverse information sources is inherently democratic. As private, unregulated programmers have stormed the cable converter box, America's politics have been shaken and international despots have fallen. The tectonic plate shift wrought by cable deregulation of the 1970s showed that making information cheap by prying communications markets open was the one way government could in reality advance First Amendment values. This is a huge lesson for policy makers as we lurch toward the 21st century.

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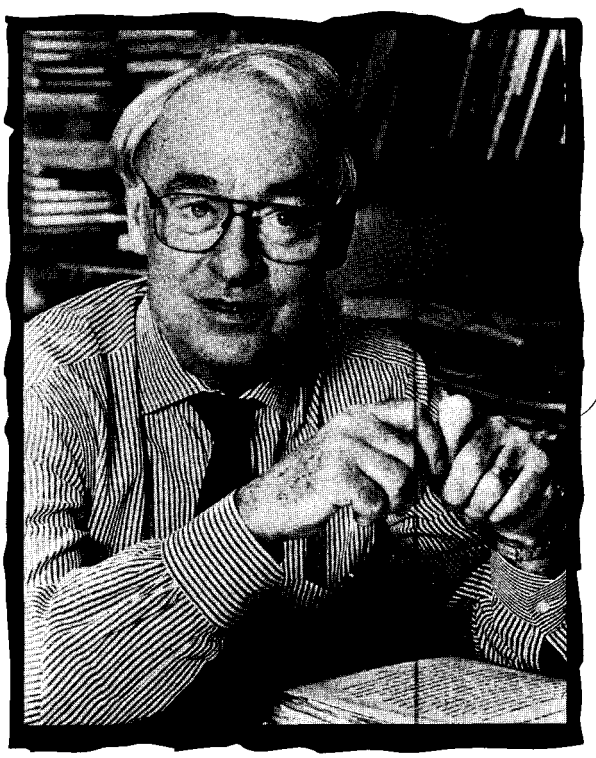
CNN INC.

Q&A

NO EASY ANSWERS

James Q. Wilson on bureaucracy, crime, and community

Interviewed by William D. Eggers and John O'Leary



James Q. Wilson is one of the foremost authorities on crime and bureaucracy—two seemingly disparate topics that most REASON readers will recognize as intimately connected. As the author or editor of books such as *The Moral Sense* and *The Politics of Regulation*, Wilson has added immensely to our understanding of complex social structures and individual behavior. He has also shaped public policy by serving on a number of national commissions, such as the White House Task Force on Crime (1966) and the President's Foreign Intelligence Advisory Board (1985–1991).

Although Wilson, the James Collins Professor of Management at UCLA, is no libertarian—resolutely against drug legalization, he informed our interviewers that he has "a mutual non-aggression pact" with REASON on the topic—his work is characterized by an emphasis on issues such as the appropriate scope of government, the baleful effects of centralized social engineering, and the primacy of individual responsibility and autonomy.

Perhaps the single most remarkable attribute of Wilson's work is its sense of engagement with an intensely real world populated by living, breathing individuals. Even though he is an "expert" on human behavior and social organization, he admits to no glib answers or sweeping theories. As he writes in *Crime*, the new essay collection he edited with Joan Petersilia, "We offer no magic bullet that will produce safe streets or decent people. What needs to be done is difficult, complex, and costly, and the gains will be deferred and moderate. But they may be all the more lasting because they have been achieved by linking scientific knowledge and practical wisdom to the interests of both citizens and public officials."

Reason Foundation Privatization Center Director William D. Eggers and Policy Analyst John O'Leary interviewed Wilson at his UCLA office.

Reason: For the first time since the Eisenhower administration, Republicans control both houses of Congress. House Speaker-in-waiting Newt Gingrich has called the mid-term elections a victory over "bigger government, redistributionist economics, and bureaucracies deciding how you should spend your money." Can the GOP really reduce the scope of federal government?

Wilson: That is clearly their sincere intention, especially with respect to the House leadership. But I don't think they can diminish the scope of the federal government in a significant way unless they first confront the collective choice problem. And that consists of the following: Individual voters want lower taxes, no deficit, *and* high levels of spending on a variety of entitlement and other programs.

The voters have not had to confront the inconsistency of those preferences. When that inconsistency was pointed out to voters during the Reagan administration, they were assured that the elimination of waste, fraud, and abuse would solve that problem. It will not.

In the long run, however, if the Republican leadership succeeds in passing a constitutional amendment requiring a balanced budget and permitting a line-item veto, they will set in motion events that may force those hard choices. It's possible they will succeed in attaining some reduction. But no one has yet succeeded in reducing the size or scope of the federal government. Even the Reagan-era cuts turned out, in retrospect, to be quite modest and generally short-lived.

Reason: Last year, Al Gore's National Performance Review was touted as "revolutionary" by the White House. You yourself have called it, "the best White House statement I have ever read about what citizens really want from government and how, in theory, it can be delivered." What's the catch?

Wilson: The catch is we don't know how to convert theory into practice. If we want to answer that question seriously, we have to—among other things—ask whether any government agency, no matter how inspired it may be, can deliver its service the way citizens want it.

The first part of my sentence that you quoted said, "This report, unlike all the others I've read, asks itself: How can I be of better service to people who want things from government or who are being regulated by government?" All previous efforts talked about inefficiency or increasing presidential power. The Gore report does offer some ideas drawn from business literature about how in theory you do this. In theory, you could give lower-ranking authorities the power to make more discretionary decisions. An example: If you know it's within the law and you're sure it's the honest thing to do, then just do it. In theory, that's a wonderful idea. Who could object to that? It's like saying, in theory, we know how to design good families—caring and enforcing rules that take the best interest of the child into account. The question is, How do you go from theory to practice? I'm skeptical of the overall theory about institutionalizing the spirit of customer service that exists in the private sector because government represents a sovereign power, not a competing provider.

In our system of government, there have hardly been any cases where somebody wins the struggle for power. Rather, like a peace treaty, the legislation, the court rulings, and administrative procedures are negotiated among the combatants in a way that everybody is given a piece of the action.

Some people suggest that the problem is the separation of powers. If you had a parliamentary system, the struggle for power would not result in such complex peace treaties that empower so many different people to pursue so many contradictory aims.

This is true, up to a point. The question is, Do you want a system of government that has the power to do this? When you give this power to government, government expands much faster. But, on the other hand, it probably regulates with a lighter hand. Our system of government has made the rate of government growth slower than parliamentary systems. The tax level is lower than in most other nations, but we do regulate with a heavier hand. Other tradeoffs also exist, such as: To what extent do you want the government to be open to external investigation, to have a Whitewater or Watergate?

"We can no longer tolerate a governmental system which guarantees that people of relatively young age will be impoverished in order to support people of relatively old age, a system where you have almost no chance of earning a positive rate of return on your Social Security payments."

I confess that I prefer the American version of that tradeoff. I would rather have a slower rate of government growth even though I know by so doing I will pay a high price in a few ways. I will have an administrative system where there is no way to extricate red tape. I know that once the government ever manages to start doing something, it will be at least as hard to change that here as it is abroad.

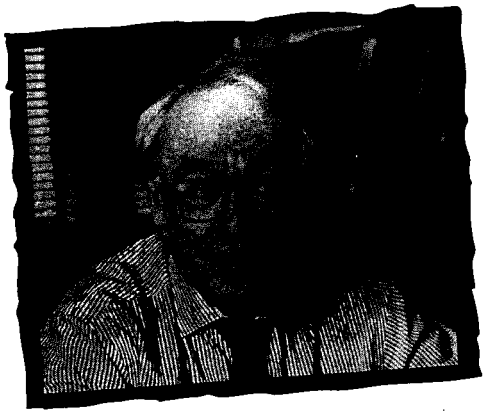
I'm not sure how important this last point is because, if you ask which government in the world has been the boldest in the last 15 years in reconsidering the past courses of action, the United States has to be at the top of the list. We started the move toward cutting taxes and we started the effort to begin deregulation. Then again, you can say other countries have provided, for example, more parental choice in schooling.

Reason: You have criticized the Gore report for only recommending the elimination of a few programs. What things does government do now that it shouldn't be doing at all? Is the failure to ask this question—what should government do?—the main weakness of reinventing government?

Wilson: Yes, that is the biggest weakness of the re-

PHOTOS: JONATHAN NOUROK

inventing government movement and of virtually every other effort to think about the problems of government. I don't want to say that Mr. Gore has failed more conspicuously than other people, but he fails in precisely the same way.



Where should we look for things that government ought not to be doing? At the national level, I would begin with Social Security. We can no longer tolerate a governmental system which guarantees that people of relatively young age will be impoverished in order to support people of relatively old age, a system where you have almost no chance of earning a positive rate of return on your Social Security payments. We *know* that there are systems—not only in the private sector in this country but also in nationally privatized systems in places such as Chile and Singapore—where you can have better retirement benefits without taxing the young to pay for the old.

"The 100,000 cops are nowhere mentioned in the crime bill. The bill calls for appropriations that would permit you, making certain assumptions, perhaps to get up to 100,000 five or six years from now. *Possibly.* Cities have to pay part of the price tag, and some cities are not going to do it."

Medicare and Medicaid are close seconds in answer to your question. I believe we ought to subsidize some health care for the poor, but Medicare subsidizes everyone's health care. In terms of other functions, we are making a mistake about insisting on a public school monopoly.

Reason: Is the answer to devolve federal government activity to the state and local levels?

Wilson: I can give a theoretical answer to that question, but the theory has nothing to do with how those decisions get made. On economic grounds, you can say that the federal government has a responsibility for only those problems that cannot be handled at the state and local level, such as issues dealt with by the State Department. You have to have certain environmental questions dealt with at the federal level and also income redistribution, if that is something you favor.

But I don't think there is much hope for the idea of devolving authority. Once we have sold the idea (which we didn't succeed in selling until 1965) that the federal government is responsible for everything, the idea of state and local control doesn't make political sense. I'm not very optimistic about devolving control. It is just too easy for Congress to pass a law that imposes costs on others—unfunded mandates, etc. It is even difficult to define what an unfunded mandate is. If a radical devolution of powers was possible, it would have been done before. The assumption of states' rights is gone. There's no support for it in the Supreme Court and there's no support for it in public opinion.

Reason: Are you concerned that the crime bill federalizes law enforcement?

Wilson: I am indeed. I have a lot of trouble with the federal government asserting that it now has authority over enforcement of criminal issues. That's a big mistake.

I like building more prisons. I like the drug courts. I think the most interesting aspect of the bill is one that hasn't been talked about, and that's the ban on semi-automatic pistols whose magazines have more than 10 rounds. That would, in effect, make it illegal for Americans to buy virtually any semi-automatic pistol on the market.

This includes Barettas, Glocks, Colts, and Brownings, all of which have magazines ranging from 12 to 16 rounds. Those guns will all become illegal to manufacture. Nobody has even mentioned that. They talk as though the debate is on assault weapons. I don't care if they ban AR-15s and AK-47s because I'm absolutely confident that there's no way Congress will move much beyond that. I don't buy the National Rifle Association's argument that this puts the camel's nose under the tent. There is no way the American public will sit still for the banning of or putting any significant restrictions on the kinds of guns they want. The ban is mostly symbolic arm waving, apart from the magazine issue, which is why I am amazed that no one has ever talked about it. This is as close to a ban on a certain kind of handgun as we've even considered. Doubtless, manufacturers can alter their models so that they hold no more than 10 rounds, but that's rather silly.

Reason: What about the funds for more police?

Wilson: Well, first of all, the much-discussed 100,000 cops are nowhere mentioned in the bill. The bill calls for a series of appropriations scaled over a certain period. That money would permit you, making certain assumptions, perhaps to get up to 100,000 five or six years from now. *Possibly.* It depends on how much you think it costs to put a cop on the street, and I think it costs a lot more than they think. They are considering only salary, when in fact you have training, cars, equipment, and administrative support. Moreover, the cities have to pay part of the price tag, and some cities are not going to do it.

Then half [of the cops] are reserved for cities under 150,000. What that means is that we'll have federally funded cops in places like Bangor, Maine, and Walnut Grove, California. So now we're down to 50,000 cops—again, *possibly*—to spread around to cities with over 150,000. Well, every state and every congressional district has to get some. There will be some margin to reward those states, such as California, that Mr. Clinton needs to get reelected.

In the end, do you know how many cops Los Angeles might get, if all the assumptions break favorably?

Maybe 500? Now, Los Angeles could certainly use 500 more police officers. But this is a clumsy and misleading way to get them, because in five years their pay has to come out of the local taxpayers. Either that, or the federal government is going to say, "Well, we will continue the funding but only on condition that you follow these 97 federal guidelines," which I think is absolute mischief. I remember during debates for the federal aid to education act, supporters said federal money wouldn't lead to federal control of schools. Of course it did. It brought a boat load of paperwork, and this will too.

Reason: It must strike you as ironic that even as the crime bill gives the federal government more control over local police, the bill itself pays lip service to your notion of "community-based policing."

Wilson: Community-based policing has now come to mean everything. It's a slogan. It has come to mean so many different things that people who endorse it, such as the Congress of the United States, do not know what they are talking about. In the crime bill, Congress has said that, "Community policing works." I'm an *advocate* of it and I don't know whether it works. We have no carefully evaluated, long-term experience with it yet in any big city, with the possible exception of Houston, that tells us whether community-based policing "works."

Reason: What do you mean by "community-based policing"?

Wilson: I mean that the function of the police is to solve problems that have law-enforcement consequences in a way that is based on a genuine partnership with the neighborhood in both the venting of the problem and the discussion of the solution. Say the problem is drug dealers, or teenage gangs, or graffiti. Identifying those as problems and discussing solutions for them will be a collaborative effort. The police will do this proactively and will not wait simply to respond to a 911 call.

Reason: What kinds of proactive policing are you talking about?

Wilson: All sorts of things. You can enforce truancy laws, you can enforce a whole list of things: curfew laws, revoke a landlord's building occupancy permit, etc. The technique that police use—within broad limits—is almost irrelevant to the argument. The point is that it is to be proactive, problem-oriented, and neighborhood-based.

That still leaves a lot of questions. In what kind of neighborhoods can you have this kind of partnership? We know they now exist in affluent communities where the police and neighborhoods talk all the time. But how far down in the social structure can you go and still have that kind of effective partnership that will not either be destroyed by the absence of any social structure or corrupted by ideologues in the neighborhoods who will use this as a way of gaining and keeping power?

Reason: The Republicans are talking about passing their own crime bill in early 1995. Do you think it will counterbalance the weaker aspects of the current crime bill?

Wilson: First, most of the things that are in the current crime law as enacted are meaningless unless there are appropriations to fund them. The Republicans need do nothing more than block the appropriations for undesirable or untested programs. They do not need to repeal or amend the bill.

The larger question, however, is whether there is anything that the federal government can do at all to make a significant impact on the crime problem. I'm very skeptical of that. The Republicans may pass a crime bill that would meet with general approval—that might, indeed, meet with my approval. But it would not be a crime-reduction bill. It would be a justice-enhancing bill.

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By that, I mean it would be a bill that reduces the extent to which the current system perpetuates injustices by, for example, allowing convicted prisoners to make endless and costly appeals. Or by penalizing police officers who make an honest mistake in making a search or conducting an interrogation in ways that allow the guilty party to go free. There is some reason to think that Congress can correct some of those injustices.

But whatever they do will have next to no effect on the crime rate. Still, it's worth doing nonetheless, because it would make people feel that the system now strikes a more reasonable balance between the rights of the accused and the rights of society.

Reason: As a society, how do we minimize crime?

Wilson: We have two kinds of crime problems. The first crime problem is common to every industrialized nation in the world, from the United States to France, Italy, Sweden, Australia, Canada, and even Switzerland: They all have high and rising rates of property crime and some increases in the rates of violent crime. I believe that the high rates of property crime (and some of the increase in violent crime) are part of the price you pay for freedom.

Once you emancipate people from strings, once you give them freedom to prosper, you're going to empower them to do all sorts of things ranging from the spectacularly good to the heinously bad. And the ability of public figures, or families, or village life, or customs, or tradition to restrain people is going to be powerfully degraded. You cannot change that without reimposing economic controls. Our friends in China and

Singapore believe that you can have economic freedom and advantages without paying the social price. I don't think they are right.

Reason: Would you favor giving up some freedom, some affluence, in exchange for lower crime rates?

Wilson: I would certainly give up some freedom in exchange for that. I certainly am willing to give the police more power to stop and question people, just as I am willing to have metal detectors at airports. I don't like it, but there's a great benefit and the inconvenience to the average person is not that great. But I don't think giving up *some* freedom will produce much of a gain.

Other countries experiencing higher rates of property crime than we do already give their police more power. You don't want to be arrested by the police in Stockholm or London. They are not bound by the Miranda rules.

Once you emancipate people, once you give them freedom to prosper, you're going to empower them to do all sorts of things. The ability of public figures, or families, or tradition to restrain people is powerfully degraded. You cannot change that without reimposing economic controls.

Reason: Wouldn't increasing police power to conduct pat-down searches of individuals exacerbate antagonisms between communities and the police, especially in the lower-income and minority areas likely to be searched more frequently?

Wilson: Yes. It's a problem of reconciling an imperfect empirical generalization with standards of fair play. The imperfect empirical generalization is that young blacks—and to some extent young Latinos—commit a disproportional share of crimes, so they will get disproportionately stopped for searches. However, they may get stopped to a greater degree than they are actually over-represented in crime statistics. It's that excess that creates the antagonism.

That seems to me the best argument for community-based policing. If you get the police sufficiently close to the neighborhoods, then the neighborhoods will consult the police and tell them who the bad apples are. Blacks will still be stopped more frequently than somebody who lives in San Marino [a wealthy WASP Los Angeles suburb], but it will not be this excessive disproportion because the police will have calibrated distinctions among individuals based on local lore and local information. That's the theory. We don't know yet whether or not it will work.

Reason: While community-based policing might work—in fact, while it might already be informally at work—in affluent neighborhoods, what can be done for those areas that are almost totally overwhelmed by street crime?

Wilson: I said earlier that there are two crime problems. Now you're talking about the second. You're talking about the crime problem that grows out of the absolute destruction of communities. These are communities where people are growing up absent *any* social norms. Among industrialized nations, this is a distinctly American problem, although it also exists in backward nations and developing nations.

There has always been some disorganized lower class—we used to call it skid row. Now, of course, we have whole residential areas that are skid rows. There is not an inherent dynamic in human nature that makes it necessary for hundreds of thousands of people—as opposed to thousands—to live in totally disorganized communities. Nothing has changed in human nature in the past 40 years that should have produced this. What I think has happened is that a downward cycle of neighborhood decay has gotten to the point where the situation won't improve as long as people stay there. If you take people out of those neighborhoods and put them elsewhere, they might well have a chance at a decent life.

So how do you take them out? I think there are a lot of alternatives that we haven't thought of. One, of course, is the Section 8 [federal housing] voucher. Give them a voucher and let them find housing somewhere else. I think there's a lot of merit in that. I've always been in favor of rent vouchers. But it also creates a problem because if you just move them out the way they are now, no neighborhood would want to take them. Who wants a crack addict with three illegitimate kids? That's not an adequate solution. It's *part* of a solution.

I've been toying around with this idea in which young mothers who want welfare would be required to live in group homes. These could be located physically very near where the mother is now living. But you would still be taking them out of the neighborhood in the sense that no drugs would come in and no drugs would come out, including alcohol. And the children and the mothers would be under the supervision of responsible adults.

The problems of our urban areas are rooted in the failure of parents to raise decent children. Admittedly, it is a failure partially excused by the horrifying conditions under which these children must be raised. But these horrifying conditions themselves reflect a collapse of family structure from the prior generation.

I was recently arguing about this question with someone who claimed that society had let down these teenagers. I said, "No, society hasn't let them down. Their *parents* have let them down." But, she rejoined, even if the parents let them down, isn't it the case that they have to grow up in such a terrible environment that it would take a truly heroic parent to do much better?

There are two answers to that. One is that their own parents are at fault because they put themselves in the situation in which they had very little competence to raise a child. Second, it is the widespread failure of other parents that is now making the environment so

threatening for decent parents. It is a downward spiral that reveals how fragile civilization is and how quickly we return to savagery.

I am not denying that there are some economic factors, but they aren't the ones that people talk about. It is not the unemployment rate and it is not a problem that can be solved by creating jobs. It is a problem created when children grow up and learn in an environment in which they never a see a married man working for a living at a legitimate job and supporting his family. These children learn, since they have never seen such behavior, that it isn't an available alternative, or if it is, it's an undesirable one. They see fear, they see drug use, they see gangsterism, they see disorganization. This is what they learn.

Reason: What has created the widespread inability of parents to raise children?

Wilson: I wish we knew the answer. It wasn't happening at all until the late '60s, so the phenomenon has only been around for 25 years. In reality, it has only gotten dramatically worse in the last 10 years.

Several items play a role. I think Charles Murray is correct that if the welfare options were not there, fewer people would be able to support themselves in this lifestyle, and therefore fewer people would lead such a lifestyle. My only reservation is that I do not think that any politically feasible change in the monetary value of the welfare package of benefits would alter the rate at which people take advantage of it. It is a kind of safety net, and you can raise or lower the safety net a little bit and it won't make any difference. Now, Charles Murray's response to that statement would be to say, "Yes, and that's why the safety net has to be totally abolished." But that's not going to happen.

I think Myron Magnet is correct in his claim that underclass culture is a dialect of upper-class culture, with an emphasis on hedonism and personal satisfaction and value relativism. This cultural defect is something which gets magnified and endorses certain kinds of behavior. The media are partly responsible, but not because there is violence on TV. I think the impact of such depictions of violence probably has very little to do with behavior. I think television's main effect has to do with socialization. Viewers are absorbed in a world of self-expression, compulsiveness, immediate gratification—that's what TV gives you.

I do think the problem is sufficiently serious so that no modest interventions will make a difference, and no purely economic modification will make a big difference. That's why I think we really have to alter, fundamentally, the way that lots of these children grow up from ages one to 12.

Reason: Hence, your endorsement of a return to public orphanages.

Wilson: You begin with the rule that the goal of our public policy is to protect the children. We're not particularly interested in whether the mothers work or not, not interested in whether they'll get 10 percent less money or 10 percent more money. For many of these children, the only thing that will work is if they are raised in radically different settings.

This means they are either raised by somebody else or they are raised by their own mother but in an environment in which the mother herself is taught how to be a mother and the child is given a decent environment. For the most at-risk children, I suggest pooling welfare checks and housing allowances in a way that will make economically feasible group shelters, either run by government or private organizations. Sen. [Bill] Bradley [D-N.J.] is thinking about introducing a bill that would authorize it. Wisconsin's Gov. Tommy Thompson is likely to make it a main component of his reforms.

Reason: Isn't this paternalism in the extreme? In the past, you have written that the goal of public policy should be to reinforce the obligation of parents to raise their children. But wouldn't you be letting parents avoid that responsibility by allowing them to place their children in orphanages and group homes?

Wilson: Yes, it is paternalism. That is exactly what it is. What these children *lack* is paternalism. That's a very good way to put it. And it is a fair criticism to say it will let some parents off the hook. But for some people I think that's exactly right. I've increasingly come to the view that, for some children, we have to accept the fact that their parents will slough off their responsibility. We also have to reinforce the legal and cultural sanctions that support the maintenance of those responsibilities, but we have to face the fact that in some cases these cultural reinforcements will not work.

A 17-year-old girl who is on crack cocaine cannot be taught responsibility. It's impossible. We don't have the faintest idea how to do that. There are a lot of 15- and 16-year-old girls who have children who are not on crack cocaine, and who would like to be decent mothers. Most of these can be decent mothers, provided they're put in an environment where they're taught how to be decent mothers and protected from those influences outside that make it impossible to be decent mothers. That's why I support pooling the welfare checks into group shelters where mother and child

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would live together. This could help the child. Remember that we know how to raise babies. This is not a problem. Society has spent 50,000 years learning that. Putting a mother in a group shelter doesn't absolve her of her responsibilities. It says, "If you want help raising your baby, you've got to go to this shelter." Most of these mothers love their babies. They don't want to abandon them.

And it would be voluntary in the sense that, if you want public support, that's the way you get it. You don't have to go there. But you won't get any money and you won't get any housing units.

Reason: What can be done to prevent the situation in the first place?

Wilson: The first step to doing that is reducing illegitimacy. We don't know how to reduce illegitimacy. My idea is not to end welfare for 15-year-old girls. You simply say that you can't get the welfare unless you give up the opportunity to have an independent household. This would make it much less attractive for some people.

But for other people, the group homes will be very attractive. Better than the life they now lead. I am not asserting that this proposal will reduce illegitimacy dramatically. I'm saying that I think it will give the children that are the fruits of these illicit unions a better start, and that by giving them a better start and keeping them off the mean streets for five or 10 years, they will be less likely to have illegitimate children of their own. I'm betting that it's a successful second-generation strategy to reduce illegitimacy by training a generation of children that illegitimacy is morally unacceptable. Among the messages being delivered is that it's wrong.

The changes in local government—state-level tax cuts, privatization, downsizing—are all wonderful examples of the virtues of our system of government. If the central government ran our local governments, there wouldn't be any privatizing, there wouldn't be any cutting back.

Do I *know* if any of this will work? No. But it's something that can be assessed.

Reason: You've advocated using nonprofit organizations to deliver these services. Won't this turn once-independent nonprofits into virtual appendages of the state?

Wilson: The key to this question has to do with the terms and contract. It makes sense to use private contractors and nonprofits if the contracts are performance-based. The government says, "Look, we want the following outcome. If you think you can achieve that outcome at the price we're willing to pay, we'll give you a contract." A payoff follows performance.

There are real difficulties, though, with quantifying performance and terms of a contract. If I knew the answer I'd be able to retire. I'm pessimistic that much can be done about the crime problem for exactly this reason. We all know how to evaluate successful families. We do it all the time. We look at our neighbors and say the Joneses are a good family and the Smiths are doing terrible. That's a global judgment based on our perception of a wide range of factors—how the kids behave, how often the parents fight. The difficulty is putting that into contractual language.

Reason: Can we go back to an America where aid is primarily based on true voluntary self-help?

Wilson: We need to use government because there are simply too many children around for private charities to do the job. I'm trying to think of the least harmful way to structure this, but unfortunately I cannot think of a way of doing it without a good deal of public money.

We can't go back. The kinds of problems we are talking about are of an order of magnitude different even in my lifetime. We once had skid rows, and the Salvation Army took care of skid row. And that was a terrific arrangement. If that were our problem today, I would be in favor of a similar arrangement. But now we have 50,000 to 100,000 crack babies being born every year. We have millions of illegitimate children. This is a totally new phenomenon, both here and abroad. I don't see how we can cope with these problems with the resources available in the private sector. I don't think that by having these relationships between government and private agencies, we destroy the spirit of voluntarism. I think the spirit of voluntarism is as strong as it has ever been.

Reason: What is government in America going to look like in the next century?

Wilson: It's going to be bigger, more complicated, more burdensome, and more costly. No matter what point in human history you ask that question, the answer is always the same. Government gets bigger. In the United States, however, I think we may be more adept at minimizing those burdens in part because of our constitutional system, which makes it fairly easy for people to contest a burden.

I'm more optimistic about the long-term prognosis here than in Sweden or England or Germany. The changes in local government—state-level tax cuts, privatization, downsizing—are all wonderful things. They are examples of the virtues of our system of government. If the central government ran our local governments, there wouldn't be any privatizing, there wouldn't be any cutting back. That's because local governments must stand on their own fiscal feet and be responsible to the taxpayers. I think these good things will continue to happen unless the federal government finally persuades us to allow it to fund local operations.

Calling All Individualists!

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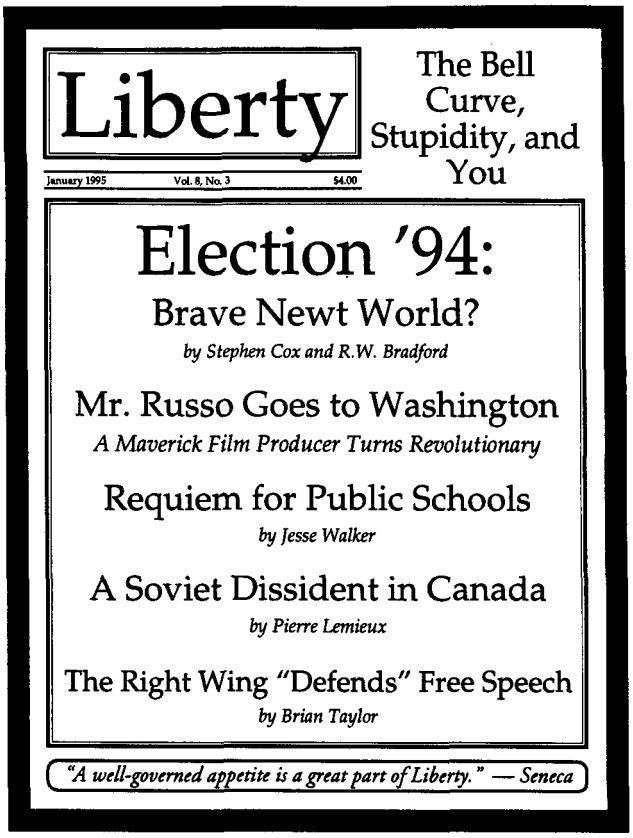
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January 1995 Vol. 8, No. 3 $4.00
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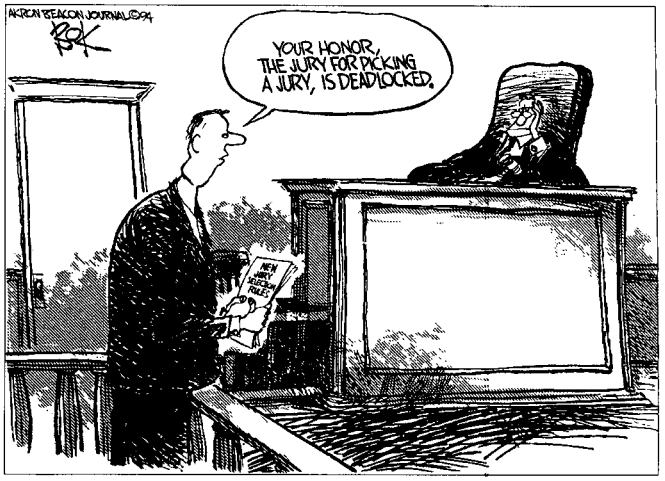
Juries on Trial

By Walter Olson

The Jury: Trial and Error in the American Courtroom, by Stephen J. Adler, New York: Times Books, 285 pages, $25.00

We the Jury: The Jury System and the Ideal of Democracy, by Jeffrey Abramson, New York: Basic Books, 308 pages, $25.00



CHIP BOK

"WHEN THEY MOVE FROM room to room, they go as a group, escorted by men in uniform," writes Stephen Adler of his subjects. "They are supposed to follow directions, ask no questions, make no demands." In cases where their captivity is prolonged, some suffer serious financial losses, while others are unable to nurse an ailing spouse or fly to a loved one's deathbed. "It was the closest I've ever been to being in jail," one woman said.

Such can be the experience of those called to serve on that reputedly all-powerful body, the jury. For many of us, no doubt, the potential excitement of acting a part in a real courtroom drama outweighs any indignation at the compulsory aspect of the adventure. Still, jury duty helps point up one of our legal system's less endearing features: its penchant for casually inflicting the kind of harms for which it would demand the most stringent punishment were they to be inflicted by anyone else.

Take the case of lost wages. Often, these days, a disgruntled applicant will drag an employer to court claiming to have been wrongfully turned down for a job. If it approves of his case, our legal system is eager to guarantee him the most liberal measure of compensation. Naturally, he'll sue for full back salary since the date at which he should have joined the payroll—without, of course, having to go back and perform any of the actual work in question. Depending on the law involved, he may also demand the cash value of fringe benefits, overtime and lost promotions, training, damages for emotional disturbance, and on and on. Whole days and weeks may be spent at trial squabbling over these entitlements.

But what about the jurors conscripted to hear his case? What can they expect as compensation for *their* lost chance to earn a living? Some purely arbitrary, token sum, such as a flat $15 a day, no matter what their actual pay would have been on the outside. Otherwise, lawyers will tell you, people will seize on exaggerated notions of the value of their time, and courts are too busy to argue about that kind of thing.

Or consider the issue of privacy. In a well-known California decision, a court ruled that a discount store unlawfully invaded the privacy of applicants for security guard jobs by asking them to fill out an off-the-shelf psychological questionnaire, even though 1) mental stability might seem to be a valuable trait in guards, who are apt to use physical force for which their employer is legally liable; 2) the store was not going to base its hiring decision on any one answer, nor release the results; and 3) no one had to apply for the guard jobs who didn't want to.

Contrast that with the treatment of Dianna Brandborg, the 48-year-old office manager from near Dallas who got drafted as a prospective juror last year. Like many jurors, she was handed a questionnaire curtly demanding information about her religion, political views, income, membership in controversial organizations, reading and TV viewing preferences, what make of car she owned, and so forth. Brandborg has lived with her husband for 20 years in the town of Shady Shores, and describes herself as "probably as law-abiding a person as there ever was. I've never even gotten a traffic ticket." But she found the questions intrusive and declined to answer some of them, asking the judge for a chance to argue that these matters were irrelevant to her ability to serve as an impartial juror. Instead, he summarily found her in contempt of court and sentenced her to three days in jail and a $200 fine, a ruling upheld on appeal. "We can't let jurors decide what questions they will ask and won't ask," a local law professor explained.

Then there's the matter of discrimination. The lawyers of America, as we know, file vast numbers of suits these days charging private parties with illegal discrimination. Sometimes the acts of bias are alleged to be subtle, or structural, or unconscious, which does not excuse the defendant from possible liability for millions of dollars in damages. When sued, an employer or landlord or lender normally swears to the court that a terrible mistake has been made, that it is a fervent opponent of discrimination or stereotyping of any sort and has spent a fortune on diversity training for its managers. The plaintiff, with equal regularity, argues that a major award of punitive damages is needed to drive home the lesson that dis-

crimination is the wickedest behavior known on this planet. (Hughes Aircraft was hit with $80 million in punitive damages in October following a complaint by two employees.)

BUT WHEN IT COMES TIME TO PICK A JURY for trial, both sets of lawyers plunge into their own frenzy of discrimination, using their free challenges to knock out jurors based on demographic category: Religion, national origin, age, and income are among the favorites. When it comes to jury selection, it's virtually malpractice for lawyers *not* to rely on group stereotyping of the grossest sort.

Women "are often prejudiced against other women they envy, for example, those who are more attractive," is one groaner from *The Art of Selecting a Jury*, published as recently as 1988. Mexican-American jurors are "passive" and "Orientals...tend to go along with the majority," we learn from a manual in recent use by Texas prosecutors. All of this goes way back: Clarence Darrow, representing criminal defendants, used to avoid jurors of Scandinavian descent because they had "too strong a respect for law as law." (Some of us are losing it, I can tell you.)

Legal gunslinger Gerry Spence, in the same situation, reportedly has favored overweight jurors on the grounds that, as Stephen Adler puts it, "fat people lacked self-control and wouldn't demand as much law-abiding discipline from others," and also preferred men to women because "men had more experience with hell-raising and were more forgiving of it." Nothing subtle or unconscious here.

Although the Supreme Court has lately ordered a halt to the use of race, and even more recently sex, as categories in jury-picking, the practice continues, in part because lawyers appear to enjoy a considerably more indulgent enforcement regime than, say, employers: If they produce some neutral-sounding grounds for their decision, they sidestep an inquiry into their motivation or the effects of their choices. The tradition, after all, is that these are peremptory strikes, requiring, as Jeffrey Abramson puts it, "no justification, no spoken word of explanation, no reason at all beyond a hunch, an intuition." (One can well imagine what would happen to an employer that asserted a right to turn down job applicants on such a basis.)

The $200-million-a-year jury-consulting industry helps arm lawyers with more numerous and comprehensive prejudices than instinct and experience alone might have furnished, to resolve those nagging questions of borderline stereotyping: Will Presbyterians be more or less generous with defendants' money than Congregationalists? Do software writers count as a warm and fuzzy occupational group, like prose writers, or are they too much like engineers, widely (and revealingly) booted from juries as "too analytic"? The "impartial juror" is just a fiction, declares an ad for lawyers touting another selection primer that "shows you how to assemble your winning jury, step-by-step." Consultants advise that "logic plays a minimal role" in the courtroom and the real trick is to identify the jurors' "psychological anchors."

THESE TWO BOOKS, BOTH INTERESTING and valuable in different ways, help show how bad things have gotten in our courts. Stephen Adler, legal affairs editor of *The Wall Street Journal*, offers well-reported narratives of six recent cases from which he draws fairly scathing conclusions about how the jury system is working. Jeffrey Abramson, who teaches politics at Brandeis, offers a wider overview of the institution's history, before settling down to concentrate mostly on the issue of racial bias in criminal trials. Neither book is wholly free from the Fourth of July bunting with which discussions of this topic are commonly festooned, and Abramson in particular shows a tendency toward liberal piety. Still, the books are clearly written and informative, and the authors' factual findings speak for themselves.

The basic lines of battle were drawn long ago. "The jury system puts a ban upon intelligence and honesty, and a premium upon ignorance, stupidity, and perjury," Mark Twain famously complained. We "swear in juries composed of fools and rascals, because the system rigidly excludes honest men and men of brains." Busy and successful people dodge service, leaving it to those with time on their hands.

And yet until lately there were also currents pulling in the other direction. Long after the demise of Founding-era property requirements, many state and federal courts sought to pre-select persons known for "recognized intelligence and probity" before pulling names at random from the resulting list. Other rules allowed the empanelment of so-called blue-ribbon juries, which might even be chosen for technical expertise. Inevitably, the 1960s brought an end to such doings (what is generally reckoned to be the last gasp came in 1975, but on matters of public policy the '60s can be considered roughly as 1965–1975).

Even the practice of conditioning jury eligibility on voter registration, in search of a level of civic-mindedness that exceeds room temperature, is now thought to be unbearably elitist, as witness New York state's proposal to place every welfare recipient automatically on the jury rolls, a courtesy not extended to members of other professions. Another thing that's changed is the exclusion of jurors "for cause" for having followed press reports or local gossip about the events at issue. Older authorities might have bounced a prospective juror for being a relative or business associate of one of the parties, or for having publicly committed himself to one side. But that was a far cry from the practice of the judge who flushed out more than 200 potential jurors for knowing too much about the intensely publicized events leading up to the Oliver North trial. ("I don't like the news," said the eventual forewoman. "I don't like to watch it. It's depressing.")

To make the cut in a big case, as both these books document in detail, it helps never to have heard of Imelda Marcos, or

never to have bought a newspaper, or, if you must buy a newspaper, to read it only for the funnies and horoscopes, or to declare that you "didn't understand...whatever I heard about the case." In the obscenity trial over the Robert Mapplethorpe exhibition in Cincinnati, the only prospective juror who regularly attended museums was dismissed for cause, it being felt that actual familiarity with those institutions put an "unnecessary burden" on her objectivity. Not surprisingly, in talk-of-the-town cases, vast armies of conscript material—1,017 in the Menendez double trial—must be screened in search of the few, the humble, the ill-informed. With hundreds of persons sitting side by side at desks filling out vast questionnaires (75 pages in the O.J. Simpson case, 45 pages for the trial of Reginald Denny's attackers), it must all take on rather the air of a giant college-entrance exam on awareness of current events, albeit with reverse scoring.

As if the sort of intrusive questions that annoyed Dianna Brandborg were not bad enough, Abramson reports that some lawyers have used private detectives to hunt down information about prospective jurors, riding through their neighborhoods and "interviewing acquaintances about marital problems, drinking problems, and treatment of minorities." Rather creepily, personal facts about jurors can make their way not only into the lawyers' hands but also onto the public record, or elsewhere.

The same week that the judge ruled against Brandborg, a criminal defense lawyer in nearby Fort Worth was apologizing to the court and to a member of the juror pool (who had not been chosen for service) for having allowed his client, an accused robber, access to personal data from her file. The defendant proceeded to call her at her home number and inform her that he was "impressed with her," a declaration which was apparently not met with pleasure, because he went on to make "some threatening remarks." After a trial, it is common for jurors to remark that the defendant wound up knowing a lot more about them than they ever came to know about him.

Jurors also face in-person interrogation before trial, a process that is supposed to be for the purpose of uncovering their many biases, but which shrewd lawyers use with other aims as well. An injury lawyer confided to Adler, for example, that he had found a better way of handling what might otherwise be a routine inquiry into whether any of the prospective jurors had ever been employees of the company he was suing. Instead of asking a single question, he was planning to linger over the subject, reciting the defendant's subsidiaries one after the next—had they ever worked for this one? That one? "That will make it clear that it's a big corporation."

Prospective juror Dianna Brandborg objected to a questionnaire demanding information about her religion, political views, and membership in organizations. The judge found her in contempt of court and sentenced and fined her.

WORSE, THIS PRETRIAL QUESTIONING (*voir dire*) can, by design or otherwise, plant in jurors' minds assumptions about the case that are oversimplified or blatantly false. Asking them whether they were ever victimized as children, for example, may cause them to assume that there is a child-victimization angle in the subsequent trial, even though the presumed culprit somehow managed to keep it from emerging in the testimony. Jurors "must not be aware that an attempt is being made to persuade them" during pretrial questioning, suggests a how-to book for lawyers. "They are convinced that they have changed their minds by themselves." New York, incredibly, does not even require a judge to be present during lawyers' screening of jurors.

Particularly grotesque is the technique known as "getting a promise." Lawyers are thought to be within their rights if they inquire whether a prospective juror's conscience would forbid him to enforce the law as it stands: The best-known example is that persons can be let off capital juries if their philosophical objections to the death penalty would keep them from voting to convict even if a crime were proved. But the promise technique goes miles beyond that. The lawyer strips his case down to its barest and most emotional essentials, and then asks whether any of the jurors would have a problem giving him a verdict on that basis. In one of Adler's deep-pocket injury cases, the plaintiff's lawyer posed the question thus: "Can you tell me," he asked prospective jurors, "that if we prove"—and he summarized his case in ultra-simplified form—that "you can return a substantial verdict?"

Forced to respond before a crowd, all the jurors meekly agreed that yes, they could assure him of that. For dramatic effect, he then proceeded to call out individual jurors' names—were you on board? And you? "The psychological research is very convincing that getting a promise does in fact work," an enthusiastic jury consultant tells Adler. "[I]f you give them positions, they adopt them."

When trial itself comes, jurors are not exactly encouraged to take the intellectual initiative; their position is more that of the Queen Bee, all-powerful in theory but immobilized and force-fed in practice. While the testimony is in progress, many judges forbid jurors from taking notes, even while everyone else in the courtroom is scribbling furiously; nor are they usually supposed to ask or suggest questions. The legal instructions on how the jury is to resolve the case are commonly withheld until the last moment, a mode of proceeding that one judge compares with asking them to watch a ball game and decide who won without letting them know the rules till play is over. When the guidelines finally do arrive, the judge (or his clerk) has frequently cast them in legal jargon aimed at

withstanding appellate review, which to lay listeners might as well be Church Slavonic.

HOW ADLER CAME TO HIS CONCLUSIONS is a story in itself. "I began this project under the influence of the usual myths and the conventional wisdom": Juries were repositories of Main Street common sense, not easily manipulated by lawyers, good at detecting liars, and so forth.

Indeed, *The Wall Street Journal*'s news coverage of the law, over which he presides, has seemed at times to subscribe to the view of the world that sees the great majority of court cases as being resolved rationally at modest expense; abusive litigation as a rare exception; businesspeople, doctors, and accountants who complain about getting sued as sore losers; and, in general, everything about contemporary American litigation as pretty much ducky (except that maybe there isn't enough of it).

In this respect, as in so many others, the *Journal*'s news side has served as the photographic negative of its editorial side. Now Adler writes as a man who has had a very close look at the sausage factory. The juries he observed compiled a "dismaying" record. He saw them "missing key points," "failing to see through the cheapest appeals to sympathy or hate," and "generally botching the job." They are much swayed by tears, even on the cheeks of lawyers. He saw "New Age bonding among jury members," but not intelligent decision making. They acquit Imelda Marcos, then think it proper to attend a soiree that she throws in their honor. ("It was so beautiful," exclaimed one. "It was swank; it was plush. I don't think I'll ever go to a bash like that again.")

He still supports the system, but now as an "act of faith." What appears to have left him especially shaken was the injustice done in the actual verdicts. In one case, a cop shows up at his ex-wife's house one morning and shoots her half-dressed boyfriend, but at trial he's personable and, as a frequent testifier, knows how to connect with a jury; they let him off despite gaping holes in his theory that it was self-defense.

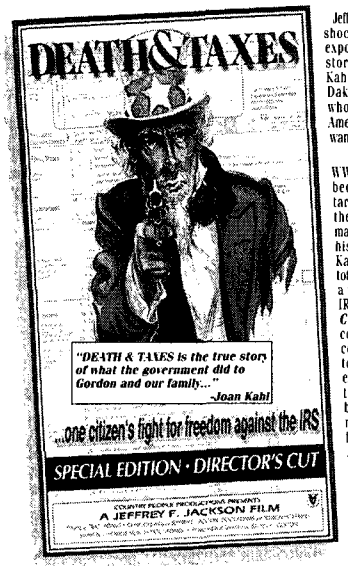
In another, an accident victim cashes in for a small fortune although "any objective look" would have found his case factually defective. Another injury claimant with a stronger but still shaky case obtains a record damage award, which later juror interviews reveal to be flagrantly unconnected to the legal rules that are supposed to govern such calculations. ("We were flying by the seat of our pants," one juror says. "It was ridiculous to determine damages without any guidelines...we had no clue.")

Adler describes a numbingly complex antitrust suit between two cigarette companies that lasts seven months and eats up a collective five years of jurors' lives but ends in an "illogical" verdict after they are "given next to no help in their effort to decide the case sensibly." Later they freely admit that central concepts in the case remained mysteries to them; one juror had regularly nodded off during the arguments, while another "daydreamed about home or rated the witnesses and lawyers on their looks and demeanor."

Such examples might seem to bear out some observers' worst fear (and others' hope) about the jury system, that it represents what Abramson calls "the rule of emotion over reason, prejudice over principle, whim over written law." Not all of Adler's material need be seen in precisely that light, however. At least in the case of the two acquittals, those of Imelda Marcos and the cop in the love triangle, jurors may simply have decided that the law as written was too harsh, and decided to suspend it. The right to engage in such "nullification," as Abramson shows, had respectable historical roots but was largely suppressed over the course of the 19th century—as an explicit matter, at least.

The fact is that juries continue to nullify anyway, instructions or no, since in practice they get the last word on acquittals. Interestingly, Abramson argues for restoring an explicit right of nullification, a position more often associated with Rocky Mountain libertarians than with

DEATH&TAXES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Eastern academics with civil-rights-movement sympathies. He properly emphasizes that any such right must operate in only one direction, "only to acquit, never to convict," it really being tyrannical to allow the punishment of actions which were lawful when taken.

And he acknowledges that part of the danger of an open nullification power is that racially polarized juries may (even more than they do now) let off wrongdoers who commit crimes in the "right" racial direction. Some other civil rights advocates have opposed nullification for this reason. Two states, incidentally—Maryland and Indiana—have recognized nullification all along; it is hard to see them as representing either a Utopia or a dystopia in criminal law.

The acquit-but-not-convict principle points up a wider truth about juries, and a reason why the case in their (partial) defense can rest on more than Adler's suggested leap of faith. Juries are at their strongest when they act as a curb on government power, protecting defendants from corrupt, fanatical, or simply careless judges or prosecutors. Like other governmental bodies, they pose a danger to liberty when they are tempted to assert affirmative power, as when they extend legal liability into new areas or try to set the level of damages.

In short, they make a useful brake—which is no excuse to turn them into an accelerator.

Walter Olson, of the Manhattan Institute, is the author of The Litigation Explosion *(Plume).*

Babylon Sister

By David Link

Vamps and Tramps, by Camille Paglia, New York: Vintage Books, 532 pages, $15.00

A SIGN ON THE STREET IN HOLLYWOOD warns of construction ahead: "Vermont Ave. congested between 3rd St. and Hollywood Blvd. Seek alternate routes." That last phrase nicely sums up Camille Paglia's writing. Academics, like their poor relations in the increasingly incestuous media, are not immune from the general instinct to travel in packs. That instinct has led to some serious congestion in contemporary thought.

Paglia has sought to find a way around the herd. And like those drivers in Hollywood who are now seeking alternate routes, her new paths are not the easiest or most convenient; some are very bumpy indeed. But a girl's got to get where she's going....

Vamps & Tramps is Paglia's latest collection of essays, her second sop (after *Sex, Art and American Culture*) to those of us who have been waiting sleeplessly for the last half of *Sexual Personae* to be released. For the uninitiated, *Sexual Personae* is Paglia's magnum opus, the first part of which surveyed sexual imagery in art from the beginning of time up to Emily Dickinson. Its prickly contrarian energy, flashes of brilliance, and unrelenting wit made Paglia a star. The second half, still being updated, will show how movies, television, sports, and rock music continue to reveal the same recurring themes —that paganism's rich, sexual texture can't be kept down in our nominally Judeo-Christian culture. Jerusalem never conquered Babylon—Christianity and paganism are in eternal tension.

A book by Paglia is a lot like sex itself: When it's good, it's very, very good. And when it's bad, it's still pretty good. *Vamps & Tramps* is a step above pretty good, a medley of Paglia's writings, musings, and doings since *Sex, Art and American Culture* was released in 1992, consisting of essays, book reviews, transcripts of films and interviews, cartoons about Paglia, and an index of media references to her, with suitably withering editorial comments for those who unfairly malign our heroine. If these last two seem more than a trifle self-serving, well, Paglia has no problem with megalomania, hers in particular.

The book's title comes from the female personae Paglia sees missing from contemporary feminism: seductresses with "vampiric power over men," women who know how to make men helpless. It's not that these personae are missing from the culture—they can be found in such powerhouse movies as *Basic Instinct* and *Fatal Attraction*, they're scattered everywhere throughout music videos and country/western songs. People can't get enough of the trial of O.J. Simpson precisely because they need to find out if Nicole had O.J. so utterly in her thrall that he murdered her and Ron Goldman in an impotent rage. An accomplished athlete, a beautiful brute of a man, helpless in the face of his feelings for his ex-wife: Now

Camille Paglia: The most exciting—and egocentric—literary and cultural critic in Babylon

LUCA BABINI

that's female power.

But feminism doesn't know how to account for men who feel they're under women's spell because of feminism's consuming focus on women as victims. Paglia sees social victimization as only part of the picture. Raw nature—sex—has to be accounted for, too. And it is women's sexual power that Paglia sees in action again and again. Female power, not female victimization, captivates our attention. Paglia's analysis of why the Amy Fisher saga warranted three TV movies is typically pithy. That story wasn't about Joey Buttafuoco at all. It was about the women: "When long-haired Amy, spoiled only child, mall chick and part-time call-girl, mounted the Buttafuoco porch with a pistol in her pocket, every power play in the history of love was on red alert. It was high noon on a Tennessee Williams veranda....Amy vs. Mary Jo Buttafuoco on the porch was a trash tango, a clash of the female titans."

The same forces of nature make pornography eternal: "What feminists denounce as woman's humiliating total accessibility in porn is actually her elevation to high priestess of a pagan paradise garden....Modern middle-class women cannot bear the thought that their hard-won professional achievements can be outweighed in an instant by a young hussy flashing a little tits and ass. But the gods have given her power."

It annoys Paglia when feminists deny women's sexual power, since any idiot can see it everywhere. The problem is that feminist academics ignore what's right in front of their eyes. Paglia pays as much attention to tabloids and TV movies as she does to Homer, Wordsworth, and (one of her special favorites) Spenser. She sees a continuity in the great themes regardless of the context. And unlike just about any other feminist academic, Paglia doesn't have a sentimental bone in her body to distract her from the truth.

On the whole, *Vamps & Tramps* is a carnival. We see Paglia here in all her guises, from the highly serious to the completely loopy. She shines in her analysis of the competing personae of Bill Clinton and Hillary, suggesting that Hillary's persona is probably more suited to being commander-in-chief than Bill's. After that, Paglia is on to a film with drag queen Glennda Orgasm ("Glennda and Camille Do Downtown") in which the two of them encounter a group of dour-faced feminists, Women Against Pornography. It is a moment of sheer comic perfection that comes through even in the transcript. The comedy is matched a little later by Paglia's advice for the lovelorn columns from *Spy* magazine. Self-described as a "short, fast-talking comedi-

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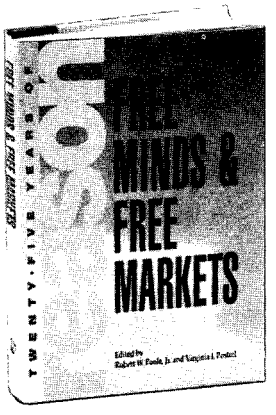

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enne with dimples, who imitates Keith Richards to avoid looking like Sally Field," Paglia dispenses her wisdom like Dear Abby on speed.

In fact, her prose is consistently among the most colorful and effective today. No one in the chattering classes can match her when it comes to the punishing reproach. Andrea Dworkin, one of Paglia's dèmons, "has turned a garish history of mental instability into feminist grand opera." Even Paglia's praise comes with barbs attached. One essay is titled, "Kind of a Bitch: Why I Like Hillary Clinton."

But *Vamps & Tramps* shows a personal side of Paglia that I don't recall having seen before, and it's a welcome departure. In a lengthy essay on four of the gay men who have been central to her life, Paglia writes with deep respect and affection about friends who have touched her thinking and being in important ways. For once, the writing is not self-centered. In giving the spotlight to others, Paglia demonstrates a grace and generosity few might suspect her of. Similarly, underneath the tirades against academic corruption, we see Paglia's fury is animated by a genuine concern for students, whose struggles with the classics she understands. She wants them to wrestle with the big books as she did, unhampered by the political preconceptions that litter academia. Her lectures end with a mantra for students that stands out as uncharacteristically sweet and hopeful in Paglia's otherwise bitchy writings: "Hate dogma. Love learning. Love art."

The meat of *Vamps & Tramps* is an essay titled, "No Law in the Arena: A Pagan Theory of Sexuality," which serves as a good overview of Paglia's controversial politics. In the sexual arena, Paglia argues, "sexual conduct cannot and must not be legislated from above...all intrusion by authority figures into sex is totalitarian." In the absence of physical violence, sex is a force of nature, and legal tinkering is as effective as making gravity a punishable offense.

Her criticism of abortion laws is typical. She refuses to get bogged down in the nit-picking over when life begins. Accept that it begins at conception, she says, and that abortion is killing. To Paglia, it's a primal form of self-defense. To the woman involved, such killing is, or should be, ethically troubling. But government, which guarantees freedom of religion, has no right to interfere with a woman's personal argument against nature. "Under the carnal constitution that precedes social citizenship, women have the right to bear arms. The battlefield is internal, and it belongs to us."

Underneath the tirades against academic corruption, Paglia's fury is animated by a genuine concern for students, whose struggles with the classics she understands. She wants them to wrestle with the big books as she did, unhampered by the political preconceptions that litter academia.

This probably won't get very far as a political argument in what is now the most sentimental nation in history, but it's exemplary of Paglia's straightforward style. She demolishes the "hostile workplace" theory of sexual harassment, noting that "*every* workplace is hostile... head-on crashes are the rule." Innovation comes from competition, aggression, opposition—it is those qualities that keep corporations, and personalities, from becoming stagnant. By trying to protect themselves from sexually explicit (or implicit) speech, women lose out by keeping themselves disengaged from the surging poetry of rough language: "Middle-class white women have got to get over their superiority complex and learn to talk trash with the rest of the human race." Paglia's models are strong, tough-talking women who knew how to answer cheeky men: her two Italian grandmothers, Rosalind Russell, Tallulah Bankhead. You have to willfully ignore massive parts of the culture to suggest women's role models in the 20th century are confined to the Debbie Reynolds/Doris Day school of blonde, perky submission. Why do women think they can't be like Katharine Hepburn?

WHEN SHE MOVES INTO HER MAJOR SUBtheme of homosexuality, however, Paglia seems to get tangled in her own reasoning. She begins by saying, "Homosexuality may be the key to understanding the whole of human sexuality." There is some important truth here. Opposing ideas enlighten one another, test limits and theses you can't examine in a vacuum. One of the reasons we cling so firmly to the view that gay men are "them" is that it so conveniently distances us from uncomfortable notions about our own sexuality we'd just as soon not face. For example, Paglia shows how the "bacchanalia" gay men in New York and San Francisco went through in the '70s helps illustrate how the absence of women affects male sexuality irrespective of sexual orientation. While a lot of people use that example to prove how uncontrollably promiscuous gay men are, viewing gay men as men reveals deep aspects of men's sexuality that we can't see in heterosexual relationships by definition.

As in the rest of her writing, Paglia has no patience for sentimental arguments about homosexuality. In the context of procreation, Paglia argues that homosexuality is every bit as unnatural as the religious right says it is. But while accepting Biblical proscriptions against homosexuality for this reason, she aptly dismantles the right's objections with the observation that we not only have a right to defy nature, but that the greatest glories of civilization, even civilization itself, are monumentally unnatural. We defy nature all the

time, and point to our accomplishments with pride, from the *Pieta* to the Panama Canal, from *Antigone* to Fred Astaire.

Paglia views homosexuality as a supreme form of natural defiance, and thus civilization. She points out that "gay male consciousness, as I have experienced it, is stunningly expansive and exquisitely precise. Gay men have collectively achieved a fusion of intellect, emotion, and artistic sensibility." It is from such observations that she suggests a biological connection between homosexuality and art: "Men are not born gay, they are born with an artistic gene, which may or may not lead to an artistic career. More often, they are connoisseurs, aesthetes, or simply arch, imperious commentators with stringent judgments about everything."

I wish. As a highly opinionated gay man, I guess I have always aspired to being an arch, imperious commentator, and I suspect most people would love to believe they fuse intellect, emotion, and artistic sensibility. Unfortunately, as anyone who has ever been to a gay rodeo knows, more than a few of us gay men have a rather clunky sense of aesthetics. I don't want to trade anecdotes, but only to suggest that sometimes Paglia lets metaphor leak over into stereotype, with some rather dire results.

As we learned during the gays-in-the-military debate, homosexuality still packs a wallop as an idea. Paglia's triumph has been in locating the idea of homosexuality within the broader context of all sexuality in art and culture. But few of us view our lives in the structured terms of art. Paglia's focus, though, is limited to sex as indicative of something bigger than itself, sex as *topos*. That literary approach, based on Paglia's reading of Freud, diminishes reality and even diminishes Freud, who recognized that sometimes you can smoke a cigar and not have to think about your mother. Paglia, who rejects nihilism, won't bear the thought that life can't always be shaped and ordered into meaning.

This makes for a real gap between the grand theories about lives and the measly details of conducting *a* life, and leaves a lot of people baffled. If gay men can't procreate and don't happen to have the wit and style of Noel Coward, they're pretty much useless as metaphors in Paglia's universe, and their defiance of nature leads to nothing. How do you account for all those homosexual farmers and shop owners and assembly-line workers Neil Miller has written about?

The limitations of Paglia's analysis show up most colorfully in her objection to lesbians who use dildos. If dildos are so pleasurable, she posits, why not go on to real penises? If a person's sexual life is simply pleasure-oriented, the conclusion is pretty obvious. But the argument breaks down if you include motives beyond sex. When you move on to real penises, there's generally a man attached to the other end. If you believe, even if you're being a sentimental fool, that sex and other aspects of life are connected, complications arise in the real penis scenario that don't appear in the dildo scheme. Examining the story as an archetype leads to a grand explanation that satisfies intellectually, but when the story is part of someone's real life, different considerations come into play, some of them pretty prosaic.

THE DANGER IS THAT WHAT MAY BE TRUE intuitively, or even statistically, will not be true in individual cases, and the individual case might take exception to being swept into a theory that doesn't include him. In holding gay men responsible for AIDS because of what happened in the '70s and early '80s, Paglia leaves out the vast numbers of gay men who were not in San Francisco and New York during those years, and the many who were but had no personal taste for the goings-on of the smart set. Even accepting the lowest numbers about who is really homosexual, nowhere near a majority of gay men are infected with HIV. The theme of natural defiance and consequent punishment is one thing as a metaphor, but it's something else again when you use it against an ordinary guy in Topeka who got it into his head that he could live his life authentically and not have to pretend he was attracted to women, but who wouldn't know amyl nitrate from Emile Zola. There is nothing worse than being held responsible for lives you are not leading, errors you have not made, failures you are trying to avoid. Anyone who has ever objected to prejudice is saying no more than that.

Paglia is not prejudiced by any means, and critics who make such a charge are willfully misreading her work. But her complete dismissal of all social constructionist arguments leads to that misreading. For example, she believes law cannot affect the prejudice many heterosexuals feel about homosexuals and gays should just accept this. But, that idea breaks down in the face of Paglia's broader and better argument that to some extent we pay attention to cultural cues, sometimes in defiance of our most fundamental natural instincts. Sometimes we can learn better. Murder is a primal urge, something even the most civilized of us might feel moved toward now and then. But we have learned how to resist the temptation, and are better for the resistance. That's what civilization is, "a defense against nature's power."

There is no reason to abandon hope that heterosexuals can resist prejudice, and every reason to believe the contrary. The point of great art is to teach empathy, illustrate the variations and the possibilities, walk us through points of view not our own. And the point of government is to try to move art's best lessons into practice, to enforce against nature what civilization it can. Accepting a little social constructionism (it's not an all-or-nothing affair) means that prejudice isn't something we have to live with, any more than murder.

As Paglia says, defying nature may be the most glorious thing about human beings. It's a little unfair of her to imply that, in this area at least, heterosexuals are civilization-impaired.

David Link is a playwright and lawyer in Los Angeles.

Machine Politics

By Brink Lindsey

Machine-Age Ideology: Social Engineering and American Liberalism 1911–1939, by John M. Jordan, Chapel Hill: The University of North Carolina Press, 332 pages, $39.95

WHATEVER DOES OR DOESN'T happen in the 104th Congress, the American welfare state faces a decidedly bleak future. It suffers a central and seemingly intractable problem: Fewer and fewer people believe in it anymore. Power without legitimacy can't be sustained indefinitely, and the welfare state's legitimacy appears to be in terminal decline. Unless that decline can be reversed, a substantial contraction in the size and scope of government is inevitable.

If you're a skeptic—if you think 1994's election may have been a fluke, if you doubt there has been a generation-long shift in the political culture away from big government—you ought to read John M. Jordan's *Machine-Age Ideology: Social Engineering and American Liberalism 1911–1939.* This fresh and interesting examination of the origins and development of big government shows just how different things used to be.

Jordan, who teaches at Harvard, tells the story over three decades of the "rational reformers," otherwise known as technocrats or social engineers. Theirs was a particular strain of American liberalism, and a particularly influential one. They shaped the Progressive era in the 1900s and 1910s, the corporatist embrace of the "associative state" in the 1920s, and the New Deal in the 1930s. And while Jordan's narrative leaves off there, he acknowledges that the story continues: "In the indistinct but crucial realm of political culture, the engineering and managerial influence persisted well after World War II, finding its highest expression in the 1950s and 1960s...."

The rationalist visions of any era share certain key features—among them, according to Jordan, "fascination with scientific method, machine process, and large-scale managerial organizations as analogues for government." Equally characteristic is disdain in equal measure for market competition and democratic persuasion, since both are too messy and too unpredictable to fit in the social engineers' blueprints. Sound familiar, Mr. Magaziner?

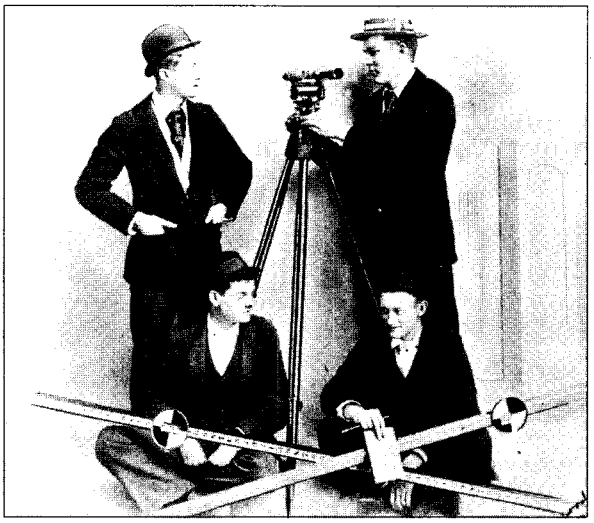
Jordan traces the roots of this worldview back to the efficiency craze that took hold in the first generation of industrialization: "A discussion of the 'best and the brightest' of the Great Society must begin with what Taylorites called 'the one best way' in the first years of the century."

The preoccupation with efficiency, epitomized by Frederick Winslow Taylor's scientific management and its time-and-motion studies, produced rhetoric that sounds distinctly odd to contemporary ears. For instance, Louis Brandeis, who helped to popularize the term "scientific management" in his celebrated challenges to railroad rate increases, declared that "efficiency is the hope of democracy." Even more strangely, a 1913 article in *System* magazine characterized Teddy Roosevelt as "the most efficient human machine of our time."

MECHANISTIC METAPHORS WERE INESCAPABLE in what was widely known as the Machine Age. Born into a technological, urban society, we take industrial culture for granted; for contemporaries, it was breathtakingly novel and disorienting. Unsurprisingly, many took their bearings from the most obvious characteristic of the times: the new mechanical marvels and the engineers who built them. "[The] engineering profession generally rises yearly in dignity and importance as the rest of the world learns more of where the real brains of industrial progress are," Herbert Hoover, known as the "Great Engineer," wrote in 1909. "The time will come when people will ask, not who paid for a thing, but who built it."

It was an easy next step to conclude that engineers and engineering principles were needed to transform not just business, but the whole of society. Charles P. Steinmetz, a well-known engineer with General Electric and an avowed socialist (he kept an autographed photo of Lenin in his G.E. laboratory), summed up the viewpoint in his 1916 book *America and the New Epoch*: "All that is necessary is to extend the methods of economic efficiency from the individual industrial corporation to the national organism as a whole."

This one idea—that the rationality of the factory, of the machine, could be extended to society generally—was the driving impulse of the rational reformers. Though technocrats are still with us, and their instincts are still the same, they are now on the intellec-



Engineer Herbert Hoover (bottom left) helped design the blueprint for the big government machine.

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tual defensive, and hence vague and evasive. Jordan provides the service of pulling together a wide variety of voices, famous and obscure, from a time when Hayek's fatal conceit was still conceited. Consider the following gems:

• Stuart Chase, journalist and author, writing in *Harper's* in 1931: "Plato once called for philosopher kings. To-day the greatest need in all the bewildered world is for philosopher engineers."

• George Soule, an editor of *The New Republic*, writing in that magazine in 1931: "As more and more people—both engineers and others—come to understand the inherent superiority of the engineering approach, the traditional business way of doing things is bound to lose its popularity."

• Howard Scott, head of Technocracy Inc., in his organization's *Study Course*: "There is only one science, and there is no essential difference between science and engineering. The stoking of a bunsen burner, the stoking of a boiler, the stoking of the people of a nation, are all one problem."

• Rexford "Red Rex" Tugwell, Columbia University economics professor and New Dealer at the Department of Agriculture, in his 1935 book *The Battle for Democracy*: "There is no invisible hand. There never was....[W]e must now supply a real and visible guiding hand to do the task which that mythical, non-existent invisible agency was supposed to perform, but never did."

• Arthur E. Morgan, head of the Tennessee Valley Authority, in his 1936 book *The Long Road*: "[C]onsensus of judgment would not mean taking formal votes on the 'one man, one vote' principle. Consensus of judgment may be arrived at by the deference of the many who do not know to the superior judgment of the few who do."

THE IDEA OF SOCIAL ENGINEERING PERMEated the political culture in the early 20th century. It attracted prominent intellectuals, among them John Dewey, Charles Beard, Herbert Croly, and Walter Lippmann (some of whom later became disillusioned). It inspired the establishment of such institutions as *The New Republic* (1914), the Institute for Governmental Research (later the Brookings Institution) (1916), the New School for Social Research (1919), and the National Bureau for Economic Research (1920).

The idea attracted doers as well as thinkers. It infused the corporate liberalism of organizations like the National Civic Foundation. And most fatefully, it lent powerful momentum to politicians—from the Progressive era, through wartime mobilization, to Hoover's dry-run New Deal and FDR's real thing—bent on a dramatic expansion of government's responsibilities and powers.

This one idea—that the rationality of the factory, of the machine, could be extended to society generally—was the driving impulse of the rational reformers.

Jordan's book focuses much more on the thinkers than on the doers. Politicians, other than Hoover, are given scant attention, and business leaders who embraced social engineering are almost completely ignored. The latter omission is particularly unfortunate; more discussion of such people as George Perkins of New York Life, Elbert Gary of U.S. Steel, Gerard Swope of General Electric, and Henry Harriman of the U.S. Chamber of Commerce would have underscored the extent to which belief in central planning (and rejection of market competition) spanned the conventional political spectrum.

Nevertheless, Jordan's book does an excellent job of recreating a lost world of ideas. Moreover, he points out that there were dissidents, however lonely: He includes discussions of Frank Knight's views on the limitations of social science, Walter Lippmann's renunciation of central planning in his *The Good Society*, and Friedrich Hayek's unflinching defense of competition.

Admittedly, there is more to the history of American statism than technocratic folly. There have been populists who clashed with the social engineers' antidemocratic and centralizing tendencies. And of course the contemporary left has been much more concerned with social and cultural issues than with economic concerns. That said, the misplaced faith in centralized expert control was surely central to big government's rise, just as disenchantment with that control is central to the current political environment.

At bottom, the belief in social engineering grew out of a profound misunderstanding of industrialization. Confronted by the technological breakthroughs of the new age, contemporaries saw not the creative power of the free market, but rather the benefits of top-down bureaucracies and central planning. Dazzled by the role of the engineer in industry, they ignored the less obvious, but still fundamental, contribution of the entrepreneur. They did not grasp that without entrepreneurship, without decentralized and competitive investment, engineering brilliance leads not to prosperity, but to pyramid building.

The misunderstanding was total. Not only did the social engineers fail to grasp the unplanned and unpredictable process by which all the new machines were being created, they saw society itself as a giant mechanism, running according to deterministic laws which they would be able to discern and manipulate. The law they didn't count on, the one that has haunted and mocked their every attempt to control society from above, is the law of unintended consequences—which is just another way of saying that people *with* minds of their own make very poor machine cogs. It is a law that, at long last, we may be learning to live with. ®

Contributing Editor Brink Lindsey practices international trade law in Washington, D.C.

FDR R.I.P.

By Thomas W. Hazlett

New Dealism no more

IT HARDLY REGISTERED ON THE BODY politic when the Clinton administration—less than a month after the loss of their friends and associates on Capitol Hill—announced the closure of 1,000 Agriculture Department offices around the country, including those in places like Manhattan (New York, not Kansas), where the only contact the citizens maintain with agriculture is as hungry diners. Congress, corrupted by hypnotic vapors of absolute authority and emboldened by a curious lack of press oversight, had gleefully launched such evil raids upon the treasury with regularity. A more competitive electoral era could well improve the taxpayers' position.

Adjusting the margins of welfarism and pork—to the extent that Republican patronage is scrutinized more intensely and punished more harshly by the voters—represents only a relatively minor social repositioning. The continental shift in our geopolitical world will hopefully occur at the moral/ethical level. No matter the degree of intellectualism in philosophical debate, there is always a superior air attached to the arguments of the one who seems—as a practical matter—to be winning. Each bidder for the political attentions of his fellow man inevitably bases the argument not only on grounds that his scheme is morally upstanding and all competitors are loathsome, but on the additional selling point that its adherents can hop aboard the engine of history.

So it has been during our entire lifetimes, during the adult consciousness of all those currently working, thinking, and writing, that the powers of the American state were deployed to the New Dealers or their offspring. Presidents and governors could come and go. The Supreme Court could meander through its various phases. But the underlying structure of government was beyond the debate, immune to external forces, owned by the heirs of FDR. Even a president of the popularity of Ronald Reagan would see his budgets received with routine contempt; "Dead on Arrival" was the gleeful pronouncement of the relevant House committee chair. New realities, both fiscal and political, could constrain the *actions* of the legislature, but nothing this side of the Divine could impinge on its philosophy of governance.

That peculiar perspective, shared honestly by a very small slice of the world's population, assumed a de facto respectability by virtue of its stranglehold on the lawmaking branch of state. Via the aura of inevitability, New Dealism maintained its monopolistic share of the political theory market even as its arguments grew flabby and its tone grew shrill. Its ringleaders could treat their opponents as morally deficient—a contempt bolstered by the fact that all the world knew that they were, as a practical matter, hapless.

THE REACTION OF THE SO-CALLED LIBERals to the embarrassing triumph of Bob Dole and Newt Gingrich has revealed the Conventional Wisdom's rotten inner core. Take, for instance, the honest observations of two journalists operating from well within the belly of the beast, Andrew Sullivan, editor of *The New Republic*, and Meg Greenfield, editorial page editor of *The Washington Post*.

Sullivan reports that the earthquake has prompted a prototypical liberal response: "It's scary." The reflex reveals two fatal flaws, he augers: "The first is that the right way to respond to political events is emotional; that the two sides in American politics can be divided into those who 'feel' the right things and those who don't; and that those who 'feel' the wrong things are either screwed-up or wicked or have just emerged from under a particularly clammy rock....The second ...is that politics is more about anathematizing than arguing. You'll find any number of liberals whose main line of attack on the new Republican leaders will be to describe them as bigots, red-necks, know-nothings, racists or religious nuts, and who regard that as an argument. (Since many liberals only fraternize with each other, of course, these sentiments have become ritualized as arguments.)"

Greenfield, in her *Newsweek* column, finds evidence of much the same demonization tactic in political discourse. In accusing the Democratic Party leadership of being in deep denial, she scores "the worst affliction" of the Old Guard: "an inability to imagine the basis of legitimate worthy opposition to themselves."

As a life-long dissenter from political orthodoxy, it is gratifying to know that I am not merely a paranoid crank. Perhaps such frank talk will infuse the Conventional Wisdom with a keener interest in diverse viewpoints and morally legitimate what were once the vilified outcasts of the intellectual roundtable.

The liberals will see this as an invitation to all manner of social villainy. Should we talk turkey with skinheads and neo-Nazis?, they will implore. That they have lost all facility for distinguishing between the dissenters and the disgusting is yet another sign that the only means for sobering up the political debate in America was an electoral cold shower the size of a tidal wave. The surf was definitely up on the eighth of November 1994. And once morally suspect skeptics of welfare-state pieties are finding the break totally tubular.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

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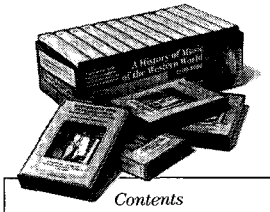

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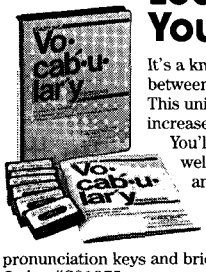

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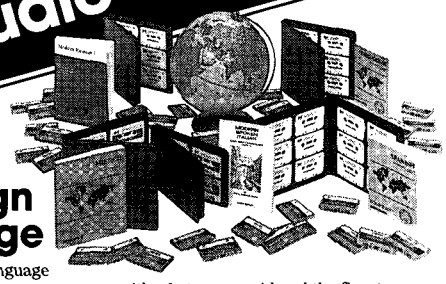

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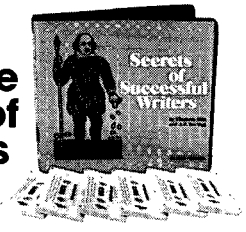

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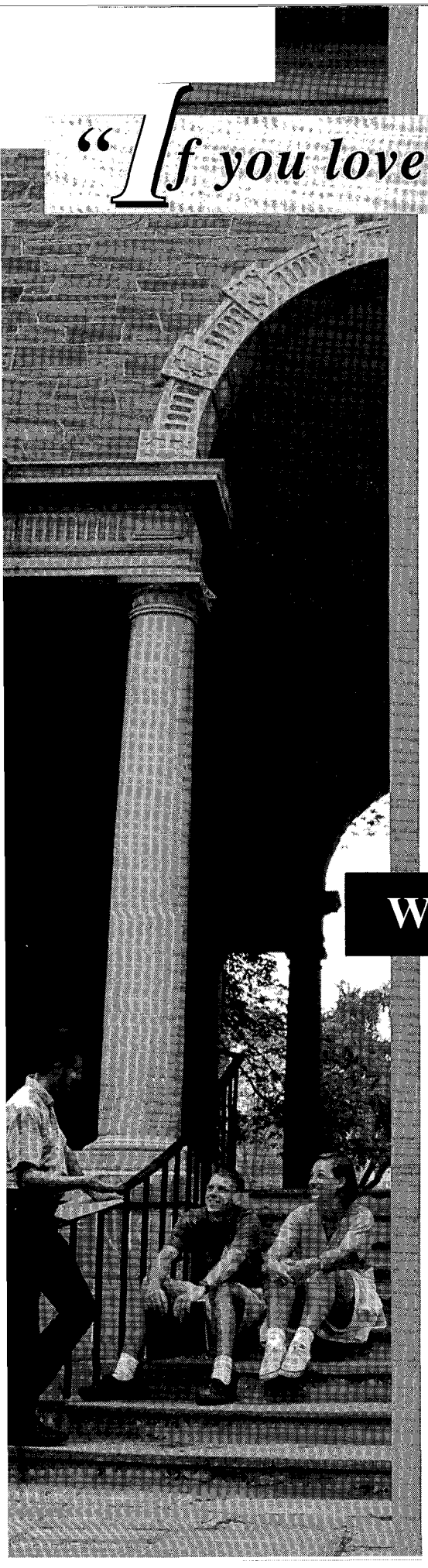

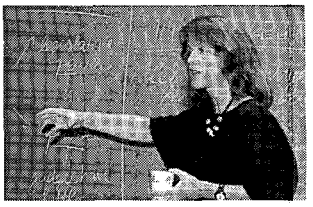

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